

No. 14374

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United States  
Court of Appeals  
for the Ninth Circuit.

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S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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Transcript of Record

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Petition to Review a Decision of  
The Tax Court of the United States.

FILED

AUG 24 1954

PAUL P. O'BRIEN



No. 14374

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Court of Appeals  
for the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

EVERETT S. LAYMAN, ESQ.,

KENNETH S. CAREY, ESQ.

For Respondent:

C. W. NYQUIST, ESQ.





The Tax Court of the United States

Docket No. 40649

S. NICHOLAS JACOBS AND DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1952

May 5—Petition received and filed. Taxpayer notified. Fee paid.

May 8—Copy of petition served on General Counsel.

May 5—Request for Circuit hearing in San Francisco, California, filed by taxpayer. 5/14/52  
Granted.

June 24—Answer filed by General Counsel.

July 2—Copy of answer served on taxpayer, San Francisco.

1953

Jan. 30—Hearing set March 23, 1953, San Francisco.

Mar. 27—Hearing had before Judge Van Fossan, on the merits. Stipulation of facts with exhibit A-1 attached filed at hearing. Petitioners' brief due 5/11/53. Respondent's brief due 6/25/53. Petitioners' reply brief due 7/15/53.

1953

- Apr. 16—Transcript of hearing 3/27/53 filed.
- May 7—Motion for extension of 45 days to file brief filed by taxpayer. 5/7/53 Granted.
- June 25—Brief filed by taxpayer. Copy served 6/26/53.
- Aug. 7—Brief in answer filed by General Counsel. 8/10/53 Copy served.
- Aug. 26—Motion for extension of 20 days to file reply brief filed by taxpayer. 8/27/53 Granted to 9/30/53.
- Oct. 1—Reply brief filed by taxpayer. Copy served.
- Oct. 30—Findings of fact and opinion rendered, Van Fossan, Judge. Decision will be entered under rule 50. Copy served 10/30/53.

1954

- Feb. 3—Agreed computation for entry of decision filed.
- Feb. 4—Decision entered, Van Fossan, Judge, Div. 9.
- Apr. 30—Petition for review by U. S. Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- May 6—Proof of service filed.
- May 6—Designation of contents of record, with attached affidavit of service by mail thereon, filed by taxpayer.

The Tax Court of the United States

Docket No. 40649

S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his joint notice of deficiency (Bureau symbols IRA:90-D:ALW(C:AS:PD:SF:GBW)) dated February 6, 1952, and as a basis of their proceeding allege as follows:

1. That petitioners are S. Nicholas Jacobs and Dolores I. Jacobs, husband and wife, residing at 1065 Sutter Street, San Francisco, California. The joint return of petitioners for the period here involved was filed with the Collector for the First District of California.

2. A single joint notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to petitioners on February 6, 1952.

3. The deficiency as determined by the Commissioner is in income taxes for the calendar year 1948

in the amount of \$42,109.63 of which approximately \$40,083.90 is in dispute.

4. The determination of taxes set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner erred in determining that there should be included in petitioners' income for the calendar year 1948 for the purpose of computing petitioners' normal tax and surtax profit from business in the gross sum of \$92,858.47 (item (b) page 1 of the statement attached to Exhibit "A" hereto) or that any of such profit should be included in petitioners' income for such purpose.

B. The Commissioner erred in determining that petitioners' normal and surtax net income for the calendar year 1948 was the sum of \$189,680.67 or any sum in excess of \$141,701.11.

C. The Commissioner erred in determining that petitioners' normal tax and surtax for the calendar year 1948 was the sum of \$105,179.83 or any sum in excess of \$65,095.93.

D. The Commissioner erred in determining that there should be disallowed as a deduction from petitioners' gross income for the calendar year 1948 the sum of \$1,000 paid to Everett S. Layman, 220 Bush Street, San Francisco, California, as a legal fee.

E. The Commissioner erred in determining that there should be included in petitioners' income for

the calendar year 1948 the gross sum of \$91,858.47 as net gain from the sale of a tract of land held by petitioners for sale to customers in the ordinary course of business.

F. The Commissioner erred in determining that there should be eliminated from petitioners' taxable income for the calendar year 1948 the sum of \$43,153.32 reported as capital gain from the sale of stock held for more than six months. Petitioners concede, however, that the capital gain should be \$45,929.24 and not \$43,153.32.

G. The Commissioner erred in determining that there is a deficiency in petitioners' income taxes (surtax and normal tax) in the sum of \$42,109.63, or any deficiency in income taxes (surtax and normal tax) of any sum in excess of \$2,025.73.

H. Petitioners concede as follows:

(i) that their net income as disclosed by their return is \$138,925.19;

(ii) that there should be added thereto \$515.16 as interest;

(iii) that there should be added thereto \$155.13 as partnership income;

(iv) that there should be added thereto \$380.04 as miscellaneous deductions not properly deductible; and

(v) that the basis for the capital stock of Hollywood Subdivision, Inc., sold in 1948 was and is \$33,141.53 and not \$38,693.36 as stated in the return.

I. Simply stated there are three errors:

(i) the failure to allow as a deduction the \$1,000 paid as attorney's fees;

(ii) the failure to recognize the sale of the capital stock of Hollywood Subdivision, Inc., as a long term capital gain and treating it as ordinary business income, and

(iii) the failure to allow an installment basis for the sale if it is a sale of land and not a sale of stock.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

A. (1) On August 28, 1946, Dr. S. Nicholas Jacobs, one of the petitioners herein, owned certain real property. He had acquired said property in 1936 and/or 1944.

(2) On August 28, 1946, Hollywood Subdivision, Inc., was incorporated under the laws of the State of California. (In Schedule D, attached to petitioners' return for 1948, this corporation is erroneously referred to as "Hollywood Park, Inc." This error is carried over into the statement accompanying the Commissioner's determination of deficiency. The corporation is hereinafter referred to by its proper name "Hollywood Subdivision, Inc.") The corporation was formed to acquire certain real property from Dr. Jacobs, and thereafter to improve the property with streets, sewers, water distribution system and other necessary utilities, so that

the property could be subdivided and sold. Dr. Jacobs desired that Hollywood Subdivision, Inc., rather than him, make the improvements and become obligated to pay for them.

(3) Thereafter, by reason of Dr. Jacobs' health and counsel's preoccupation with other matters, no further action toward acquisition of the property by the corporation was taken until January and February, 1948, when the plans for transfer of the land to the corporation and subsequent improvement of the land were again discussed. No subsequent action was taken until March, 1948, because of counsel's absence from the state.

(4) In the meantime Dr. Jacobs had received an offer to purchase the said land. This offer was unequivocally rejected by Dr. Jacobs.

(5) Some discussions were then had concerning the sale of the stock of Hollywood Subdivision, Inc. Dr. Jacobs took the firm position that no sale, contract of sale, commitment for sale, or any other arrangement for the sale of the stock could be made until after the stock had been issued.

(6) On March 30, 1948, all of the stock of the corporation was issued to Dr. Jacobs. In exchange, the said real property was transferred to the corporation by Dr. Jacobs. No other consideration was received by Dr. Jacobs for the transfer of said land to Hollywood Subdivision, Inc. The stock was a capital asset in Dr. Jacobs' hands. It had the same basis as the land which was exchanged for it, and

hence the period of holding for the stock ran from the date of acquisition of the land.

(7) Neither before March 30, 1948, nor on March 30, 1948, nor for more than a week after March 30, 1948, was Dr. Jacobs under any obligation to sell all or any part of the stock of Hollywood Subdivision, Inc., to any person or persons.

(8) Thereafter, Dr. Jacobs sold all the stock of Hollywood Subdivision, Inc. The corporation was later liquidated by the purchaser of the stock who was a stranger to Dr. Jacobs.

(9) Petitioners admit that the selling price of the stock of Hollywood Subdivision, Inc., was \$125,000.00, and the cost basis of the stock was \$33,141.53, both as determined by Respondent, producing a net gain of \$91,858.47 and a taxable income in the amount of \$45,929.24.

(10) Dr. Jacobs realized a long term capital gain upon the sale of the Hollywood Subdivision, Inc., stock in 1948. The Commissioner has erroneously determined that said sale resulted in the realization of ordinary income by him in the amount of \$92,858.47 and has erroneously asserted a deficiency against both petitioners herein in the amount of \$42,109.63.

B. (1) In 1948 Dr. S. Nicholas Jacobs, one of the petitioners herein, paid \$1,000 to Everett S. Layman, attorney at law, 220 Bush Street, San Francisco 4, California, for advisory services ren-



dered Dr. Jacobs in connection with the Hollywood Subdivision, Inc., transaction.

(2) Said payment was an ordinary or necessary expense paid during 1948 in connection with the production of income by Dr. Jacobs, or in connection with the management, conservation or maintenance of property held for the production of income.

(3) In the alternative, said payment was an expense of the exchange of Dr. Jacobs' land for the stock of Hollywood Subdivision, Inc., and properly included in the basis of the Hollywood Subdivision, Inc., stock in Dr. Jacobs' hands.

(4) The services for which said payment was made were not performed in connection with the acquisition of any land by Dr. Jacobs. Said services were not directed to increasing the value of land which was retained by Dr. Jacobs after the Hollywood Subdivision, Inc., transaction.

(5) The Commissioner erred in denying the deduction of said payment taken in the joint return filed for the calendar year 1948 by petitioners herein and in capitalizing said expense and applying said capital addition entirely to land retained by Dr. Jacobs after January 1, 1949, and after the Hollywood Subdivision, Inc., transaction was closed. Hence, the Commissioner erred in asserting a deficiency against petitioners herein.

Wherefore, petitioners pray that this Court may hear this proceeding and determine that:

(a) There should not be included in petitioners' income the gross sum of \$92,858.47 as profit from business in the calendar year 1948;

(b) Petitioners' normal and surtax net income was not \$189,680.67, or any sum in excess of \$141,701.11;

(c) There was properly deducted from petitioners' gross income the sum of \$1,000 paid to Everett S. Layman, 220 Bush Street, San Francisco, California, as a legal fee;

(d) Petitioners realized a long term capital gain of \$45,929.24 from the sale of stock held for more than six months;

(e) Petitioners' income tax (normal tax and surtax) for the calendar year 1948 is the amount of \$65,095.93 and that there is no deficiency in petitioners' income tax (normal tax and surtax) in any amount in excess of \$2,025.73; and

(f) For such other relief as may be deemed proper.

Dated: San Francisco, California, this 2nd day of May, 1952.

/s/ EVERETT S. LAYMAN,

/s/ KENNETH S. CAREY,

Attorneys for Petitioners.

Duly verified.

EXHIBIT A

U. S. Treasury Department  
Office of Internal Revenue Agent in Charge  
74 New Montgomery Street  
San Francisco 5, California

Feb. 6, 1952.

San Francisco

IRA:90-D:ALW

(C:AS:PD:SF:GBW)

Dr. S. Nicholas Jacobs and  
Mrs. Dolores I. Jacobs  
Husband and Wife  
1065 Sutter Street  
San Francisco, California

Dear Dr. and Mrs. Jacobs:

You are advised that the determination of your income tax liability for the taxable year(s) ended December, 1948, discloses a deficiency of \$42,109.63 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday,

Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of IRA:90-D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

JOHN B. DUNLAP,  
Commissioner,

By /s/ F. M. HURLESS,  
Internal Revenue Agent  
in Charge.

Enclosures:

Statement  
Form 1276  
Agreement Form

C O P Y

Statement

San Francisco  
IRA:90-D:ALW  
(C:AS:PD  
SF:GBW)

Dr. S. Nicholas Jacobs and  
Mrs. Dolores I. Jacobs  
Husband and Wife  
1065 Sutter Street  
San Francisco, California

Tax Liability for the Taxable Year Ended December 31, 1948

|                  |              |
|------------------|--------------|
|                  | Deficiency   |
| Income tax ..... | \$ 42,109.63 |

In making this determination of your income tax liability, careful consideration has been given to your protest filed September 11, 1950, and to the statements made at the conferences held on December 5, 1950, January 8, 1951, May 15, 1951, and December 11, 1951.

A copy of this letter and statement has been mailed to your representative, Mr. Everett S. Layman, 220 Bush Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Adjustments to Net Income  
Year 1948

|   |           |              |
|---|-----------|--------------|
| Net income as disclosed by return .....       |           | \$138,925.19 |
| Unallowable deductions and additional income: |           |              |
| (a) Interest .....                            | \$ 515.16 |              |
| (b) Profit from business .....                | 92,858.47 |              |
| (c) Partnership income .....                  | 155.13    |              |
| (d) Miscellaneous deductions .....            | 380.04    | 93,908.80    |
|   |           |              |
| Total .....                                   |           | \$232,833.99 |
| Nontaxable income and additional deductions:  |           |              |
| (e) Capital gains .....                       |           | 43,153.32    |
|   |           |              |
| Net income adjusted .....                     |           | \$189,680.67 |

## Explanation of Adjustments

(a) Interest income is increased by \$515.16, representing interest received from Paul Prom on notes for the balance due on deferred payments for purchase of certain lots from the Hollywood Park tract, Sacramento County, California. This interest was omitted from your return.

(b) Profit from real estate subdivision business is increased by \$92,858.47, as follows:

|  |              |
|--|--------------|
| (1) Legal fee disallowed .....         | \$ 1,000.00  |
| (2) Profit from sale of lots increased | 91,858.47    |
|  | <hr/>        |
| Total increase in business profit      | \$ 92,858.47 |

(1) Deduction of \$1,000.00 claimed for legal fee paid to Everett S. Layman, 220 Bush Street, San Francisco, California, for advisory services in connection with Hollywood Park tract, is disallowed, since it is held to represent a capital expenditure.

(2) In your income tax return for 1948 you reported, as a long-term capital gain, the amount of gain resulting from a purported sale of shares of stock of Hollywood Park, Inc. The gross sale price reported was \$125,000.00 and the cost basis of the shares reported was \$38,693.36, producing a reported net gain of \$86,306.64. It is held that the transaction, reported as a sale of shares of stock was, in reality, a sale of a tract of land which was being held by you for sale to customers in the ordinary course of business, and that the resulting gain is taxable as ordinary income. The amount of net gain determined is shown as follows:

|   |              |
|---|--------------|
| Selling price .....                                   | \$125,000.00 |
| Less: Cost apportioned to portion of tract sold ..... | \$ 8,335.20  |
| Cost of improvements .....                            | 24,806.33    |
|   | <hr/>        |
| Total cost .....                                      | 33,141.53    |
|   | <hr/>        |
| Net gain .....  | \$ 91,858.47 |

## Explanation of Adjustments—(Continued)

Accordingly, the profit reported from your real estate subdivision business is increased by \$91,858.47. Capital gain of \$43,153.32 reported from the sale of this property is eliminated from taxable income as shown under item (e) below.

(e) Partnership income reported from Doctors Hospital Group of Doctors, 1065 Sutter Street, San Francisco, is increased by \$155.13, as follows:

|   |                     |
|---|---------------------|
| Partnership income disclosed by partnership return .....            | \$ 78,004.08        |
| Additions:  |                     |
| (1) Legal expense .....   | 310.25              |
| Total .....   | <u>\$ 78,314.33</u> |
| Deductions:   |                     |
| (2) Fees paid to physicians other than members of partnership ..... | 13,028.40           |
| Partnership income as adjusted .....                                | <u>\$ 65,285.93</u> |
| Your distributive share .....                                       | \$ 31,142.97        |
| Amount reported on your return .....                                | <u>30,987.84</u>    |
| Increase in partnership income .....                                | \$ 155.13           |

(1) Deduction of \$310.25 claimed for legal fees paid to Peter S. Sommer, attorney, 625 Market Street, San Francisco, California, for services rendered in the preparation of an amended partnership agreement, which was executed by the partners on May 26, 1948, is held to be a capital expenditure, and therefore is disallowed as an operating expense of the current taxable year.

(2) Fees paid to physicians other than members of the partnership are held to be a proper deduction in determining net income of partnership. These fees were shown as distribution of partnership profits on the partnership return filed for the taxable year.

## Explanation of Adjustments—(Continued)

(d) Other deductions claimed on your return include depreciation of \$380.04 on automobile used for business purposes. It is determined that this automobile was fully depreciated prior to the taxable year. Accordingly the depreciation of \$380.04 claimed on account of this automobile for the taxable year is disallowed.

(e) You reported long-term capital gain of \$43,153.32 on the sale of capital stock of Hollywood Park, Inc. It is determined that the gain from this sale constitutes ordinary profit from the sale of a tract of land held by you for sale to customers in the ordinary course of your business. Accordingly the profit from this sale is included under business income as explained in item (b)(2) above. The capital gain of \$43,153.32 reported by you on this sale is eliminated from your taxable income.

## Computation of Alternative Tax

Year: 1948

|  |              |              |
|--|--------------|--------------|
| Net income .....   | \$189,680.67 |              |
| Less: Excess of net long-term capital gain over net short-term capital loss (\$58,942.41 less \$43,153.32) ..... | 15,789.09    |              |
|  |              | <hr/>        |
| Ordinary net income .....  | \$173,891.58 |              |
| Less: Three exemptions at \$600.00 each .....  | 1,800.00     |              |
|  |              | <hr/>        |
| Normal tax and surtax net income .....   | \$172,091.58 |              |
| One-half of normal tax and surtax net income .....   | \$ 86,045.79 |              |
| Tentative tax .....  |              | \$ 55,298.46 |
| Less: 17% on \$400.00 .....  | \$ 68.00     |              |
| 12% on \$54,898.46 .....   | 6,587.82     | 6,655.82     |
|  |              | <hr/>        |
| Balance of tentative tax .....   |              | \$ 48,642.64 |
| Partial tax—twice the above balance of tentative tax .....   |              | \$ 97,285.28 |
| 50% of excess of net long-term capital gain over net short-term capital loss .....                               |              | 7,894.55     |
|  |              | <hr/>        |
| Alternative tax .....  |              | \$105,179.83 |



Computation of Income Tax  
Year: 1948

|   |              |              |
|---|--------------|--------------|
| Net income .....  | \$189,680.67 |              |
| Less: Three exemptions at \$600.00 each   | 1,800.00     |              |
|   | <hr/>        |              |
| Normal tax and surtax net income .....  | \$187,880.67 |              |
| One-half of normal tax and surtax net<br>income .....   | \$ 93,940.34 |              |
| Tentative tax .....   |              | \$ 62,048.10 |
| Less: 17% on \$400.00 .....   | \$ 68.00     |              |
| 12% on \$61,648.10 .....  | 7,397.77     | 7,465.77     |
|   | <hr/>        | <hr/>        |
| Balance .....   |              | \$ 54,582.33 |
| Total income tax—twice the above bal-<br>ance .....   |              | \$109,164.66 |
| Total alternative tax .....   |              | \$105,179.83 |
| Correct income tax liability .....  |              | \$105,179.83 |
| Income tax disclosed by return Original,<br>Account No. 319104 May, 1949, List<br>First California District ..... |              | 63,070.20    |
|   |              | <hr/>        |
| Deficiency in income tax .....  |              | \$ 42,109.63 |

Filed May 5, 1952, T.C.U.S.

Served May 8, 1952.

[Title of Tax Court and Cause.]

### ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above petitioners, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the deficiency as determined by the Commissioner is in income taxes for the calendar year 1948 in the amount of \$42,109.63; denies for lack of information the remaining allegations contained in paragraph 3 of the petition.

4, A to G, inclusive. Denies the allegations of error contained in subparagraphs A to G, inclusive, of paragraph 4 of the petition.

H. Admits the allegations contained in subparagraph H of paragraph 4 of the petition.

I. Denies the allegations of error contained in subparagraph I of paragraph 4 of the petition and in (i), (ii) and (iii) thereunder.

5, A, (1). Admits the allegations contained in subparagraph (1) of paragraph 5, A of the petition.

(2) Admits the allegations contained in the first sentence of subparagraph (2) of paragraph 5, A of the petition; denies for lack of information the

remaining allegations contained in said subparagraph.

(3) Denies for lack of information the allegations contained in subparagraph (3) of paragraph 5, A of the petition.

(4). Admits that in the meantime Dr. Jacobs had received an offer to purchase the said land; denies the remaining allegations contained in subparagraph (4) of paragraph 5, A of the petition.

(5). Denies for lack of information the allegations contained in subparagraph (5) of paragraph 5, A of the petition.

(6) to (8), inclusive. Denies the allegations contained in subparagraphs (6) to (8), inclusive, of paragraph 5, A of the petition.

(9). Admits that petitioners sold for \$125,000.00 assets having a cost basis of \$33,141.53; denies that said sale was in substance a sale of stock.

(10). Denies the allegations contained in subparagraph 10 of paragraph 5, A of the petition.

B, (1). Denies for lack of information the allegations contained in subparagraph (1) of paragraph 5, B of the petition.

(2) to (5), inclusive. Denies the allegations contained in subparagraphs (2) to (5), inclusive, of paragraph 5, B of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES W. DAVIS,  
Chief Counsel, Bureau of  
Internal Revenue.

Received and filed June 24, 1952.

Served July 2, 1952.

---

[Title of Tax Court and Cause.]

MINUTES OF MARCH 27, 1953

Filed at hearing: Stipulation of Facts with Exhibit A-1, attached.

Petitioner's brief: 45 days—May 11, 1953. Reply: 20 days—July 15, 1953.

Respondent's brief: 45 days thereafter—June 25, 1953.

Witnesses for Petitioner:

Everett S. Layman,  
Robert L. Schwerin.

Witnesses for Respondent:

None.

Respondent's Exhibits: (Letter and Describe.)

B. Income Tax Return—1948.

C. Certificate of Dissolution, etc.—4/8/48.

/s/ MARY Y. ROBERTS,  
Acting Deputy Clerk.

[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It is mutually stipulated and agreed by and between the parties hereto, by their respective counsel, that the following statements may be taken as true by the Court with the reservation that this stipulation shall be without prejudice to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. That petitioners are S. Nicholas Jacobs and Dolores I. Jacobs, husband and wife, residing at 1065 Sutter Street, San Francisco, California. Petitioner S. Nicholas Jacobs is hereinafter for convenience usually called Dr. Jacobs. The joint return of petitioners for the period here involved was filed with the Collector for the First District of California.

2. A single joint notice of deficiency (a copy of which is attached to the petition on file herein and marked Exhibit "A" thereto) was mailed to petitioners on February 6, 1952.

3. The deficiency as determined by the Commissioner is for income taxes for the calendar year 1948 in the amount of \$42,109.63, of which approximately \$40,083.90 is in dispute. It is conceded by petitioners that \$2,025.73 of the deficiency asserted by respondent was correctly asserted as a deficiency.

4. On August 28, 1946, Dr. S. Nicholas Jacobs, one of the petitioners herein, owned certain real

property. He had acquired said property in 1936 and/or 1944. A part of said lands was included in the map of Hollywood Park Unit No. 2 which was filed for record in the Office of the Recorder of Sacramento County on July 29, 1946, and was recorded in Book 24 of Maps, Map No. 2. A different part of said lands was included in the map of Hollywood Park Unit No. 3 which was filed for record in the office of the County Recorder of the County of Sacramento on November 25, 1947, and was recorded in Map Book No. 27, Map No. 13.

5. On August 28, 1946, Hollywood Subdivision, Inc. was incorporated under the laws of the State of California. Everett S. Layman, Daisy G. Kerner and John P. Fryer were the incorporators. (In Schedule D attached to petitioners' return for 1948, this corporation is erroneously referred to as "Hollywood Park, Inc." This error is carried over into the statement accompanying the Commissioner's determination of deficiency. The corporation is hereinafter referred to by its proper name "Hollywood Subdivision, Inc.") No capital stock was issued at that time or until about March 30, 1948. Hollywood Subdivision, Inc., was dissolved on or about April 8, 1948, by one or more or all of Frank MacBride, Jr., Thomas J. MacBride and Dorothy M. Baker.

6. Early in 1948 Dr. Jacobs received an offer from Frank MacBride, Jr., or MacBride Realty Co. to purchase some of the land from Dr. Jacobs.

7. On March 8, 1948, Hollywood Terrace, Inc., was incorporated under the laws of the State of California, at the instance of Frank MacBride, Jr. Frank MacBride, Jr., Thomas J. MacBride and Dorothy M. Baker were the incorporators. At all times material to this proceeding Frank MacBride, Jr., owned 98% of all of its issued and outstanding common capital stock. Thomas J. MacBride owned 1% thereof and Dorothy M. Baker owned 1% thereof. At no time did Dr. Jacobs or his wife have any interest, direct or indirect, in the stock of Hollywood Terrace, Inc. That corporation was at all of said times dominated and controlled by Frank MacBride, Jr.

8. If the Court determines that petitioners sold stock of Hollywood Subdivision, Inc., petitioners received in exchange for said stock a note in the sum of \$175,000.00, which note had a fair market value at the time it was received in 1948 of \$125,000.00, and the petitioners' adjusted cost basis of said stock was \$33,141.53, and the holding period began at the date of the acquisition of the land which date was in 1944 or prior thereto. Said adjusted cost basis does not include any adjustment for attorneys' fees and it is subject to further adjustment for such fees to the extent that this Court holds that attorneys' fees are properly a part of the cost of said stock. If the Court determines that petitioners sold land instead of stock, the petitioners received in exchange for said land a note in the sum of \$175,000.00, which had a fair market

value at the time it was received in 1948 of \$125,000.00, and petitioners' adjusted cost basis of said land was \$33,141.53, and the holding period of said land began in 1944 or prior thereto.

9. On or about April 6, 1948, Frank MacBride, Jr., wrote a letter to Dr. Jacobs which was received by him, a photostatic copy of which letter is attached hereto and marked Exhibit "A."

/s/ EVERETT S. LAYMAN,  
Attorney for Petitioners.

/s/ CHARLES W. DAVIS,  
Attorney for Respondent,  
Chief Counsel, Bureau of  
Internal Revenue.

#### EXHIBIT A

[Letterhead]

MacBride Realty Co.  
913 Eighth Street  
Sacramento 14, California

April 6th, 1948.

Dr. S. Nicholas Jacobs,  
1065 Sutter Street,  
San Francisco, California.

Dear Doctor Jacobs:

I am reluctant to request a switch in the arrangements between Hollywood Terrace, Inc., and your-



self in connection with the purchase of the stock of Hollywood Subdivision, Inc., which my company has purchased from you for \$175,000.00, evidenced by a note secured by a pledge agreement.

After further consultation with my advisers, it appears desirable from our standpoint that Hollywood Subdivision, Inc., be dissolved. We think that you could be adequately protected by taking a new note secured by a real estate mortgage which would be a first lien on Lots 203 to 363, both inclusive, of Hollywood Park Unit No. 3.

I would be grateful if you could let me know whether this will be satisfactory to you.

Inasmuch as time is of the essence, your prompt response would be appreciated.

Very truly yours,

/s/ FRANK MacBRIDE, JR.

Filed at hearing March 27, 1953.

The Tax Court of the United States

Docket No. 40649

S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

TRANSCRIPT OF PROCEEDINGS

March 27, 1953—10 A.M.

(Met pursuant to notice.)

Before: Honorable Ernest H. Van Fossan,  
Judge.

Appearances:

EMMETT S. LAYMAN, ESQ.,  
KENNETH S. CAREY, ESQ.,

Appearing for the Petitioners.

C. NYQUIST, ESQ.,

(Honorable Charles W. Davis, Chief Coun-  
sel, Bureau of Internal Revenue) Ap-  
pearing for the Respondent.

The Clerk: Docket No. 40649, S. Nicholas Jacobs  
and Dolores I. Jacobs.

Will the attorneys please state their appearances?

Mr. Layman: Emmett S. Layman for the Peti-  
tioners.

Mr. Nyquist: Charles W. Nyquist for the Respondent.

The Court: Will you state the issues, Mr. Layman.

Opening Statement on Behalf of the Petitioners  
By Mr. Layman:

May it please the Court, as I understand the issues, if I might state them as an issue of law first, and then I will try to state the issues of fact in connection with those issues of law as I understand them.

The issue of law, first, is whether \$1,000 that was paid by Dr. Jacobs in the calendar year 1948 to myself as an attorney's fee should be a capitalized cost against the property that would remain on hand at the end of the calendar year 1948, as treated in the original report of the Revenue agent, or whether it should be used in one of two ways, as an expense of doing business, if the Court should find that the transactions which will be in question were sales of real estate, and if the Court should find that it was a sale of a capital asset, well, I think that some issue could be raised that some of it was off the other end, and to save the time of the Court, that it would at that time be added to [3\*] the cost, and thereby reduce the profit by \$1,000. That is a rather simple issue. I don't see why it was never conceded by the government. I don't understand that report, but it is there.

No. 2, the question is, one, whether there was a

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

sale of a capital asset or whether it was a sale of property held by the taxpayer, which was held by the taxpayer for sale in the ordinary course of the transaction of business. The situation is a fairly simple situation.

Dr. Jacobs, some years prior to the year 1948, acquired for investment purposes some real estate outside of Sacramento. The years rolled by. The people started to roll into California, and some of it had been subdivided. A map had been recorded of the property, part of it being considered as Hollywood Park Subdivision No. 1, and then another one being considered as Hollywood Subdivision 2; and it was at that time that I first heard of the proceeding.

Hollywood Subdivision, Inc., which is referred to in the 90-day letter, I believe, as Hollywood Park, but I believe Counsel concedes it is properly named Hollywood Subdivision, Inc., was incorporated in August of 1946. That was done by my office at the insistence and request of Dr. Jacobs. The purpose behind the formation of that corporation was to—I might say that the doctor primarily is engaged in the business of being a physician and surgeon, and is the head of [4] the group that operates the Doctors' Hospital here in San Francisco, and I thought that in connection with his other business it was a mistake for the doctor to continue in the medical world and at the same time under his own name be in anything remotely resembling a subdivision. I thought it was a mistake for the doctor to be in any way liable in connection with the sales of real

estate for possible representations that might be made by agents.

I thought it was a mistake, too, for the doctor to incur liability in the sum of 75 or \$100,000 for street work, water mains, sewers, and work of that nature. I so advised the doctor, and we incorporated the corporation for that purpose. Shortly after the incorporation—I say “shortly”; perhaps that is a poor word—after the incorporation and before any of the steps that had been contemplated were taken, the doctor became ill and was operated on and left for Nevada, and for some months thereafter was not able to give the time and attention to his business affairs that he had, and the matter was dropped.

It had been originally contemplated that Subdivision No. 2, which is second in point of time, would grow into this corporation, but that did not happen. I think, probably, had that happened, we would not be here this morning.

Mr. Frank McBride of the McBride Realty Company, and I believe Mr. McBride is now the president of the California [5] Real Estate Board, or some such group of real estate men in the State of California, had been the head of the real estate firm who had successfully sold Subdivision 2, and he wanted to have the right to sell Subdivision 3; and Dr. Jacobs told him he would have to come down and talk to me in San Francisco, which he did. This was in January of 1948. At that time Mr. MacBride was unquestionably — we make no

point of this—he was interested in getting the control of a piece of property, whether it was signed by the corporate owners or personal owners or individuals, or a thousand people. All he wanted to do, unquestionably, was to sell real estate.

Dr. Jacobs didn't want to have that done. There was no percentage in his doing it. If, as a result of the plan, the income was going to be treated as ordinary income, the doctor wasn't prepared to make the deal. Mr. McBride was told that under no circumstances would the doctor permit his real estate to be sold, and that when Mr. McBride wanted to know whether he could buy it, he was told that he couldn't buy it.

Now, of course, like all things, things cannot happen in a day. At that time I was committed to go to Washington, where I went shortly afterwards, and I told him there was nothing I could do about any of it until after my return from Washington, which was early in March. As a result some [6] of the things that normally would have been done, and could have been done in the intervening time had I been available to take care of them—for instance, the street contract was signed before I came back from Washington, and of course the property hadn't been transferred to the corporation, so that contract had to be signed by Dr. Jacobs and not the corporation; but, be that as it may, it was made plain to Mr. McBride—and this entire transaction was done under my personal supervision, the conversations were held by me—Mr. McBride was told that if he didn't want to buy

some stock in Hollywood Subdivision, Inc., there was no further thing for us to do. I was very careful to be plain, pointed and meticulous that either party could run out on the other. There was no agreement for anything, and I think that it is fair to say that there were three stages in the transactions, three separate independent transactions. This wasn't one transaction. We were careful to maintain that differentiation.

For two or three years prior to the 3rd day of February, 1947, I had been actively discussing some problems with the technical staff that involved, not exactly this, but the reverse of the process, whereby distributions were made out of the corporation, and as a result of the distributions out of the corporation, taxable income resulted to the corporation; and the Department was at that time frantic in their efforts to go after them, and they have finally conceded that [7] wasn't right.

In connection with those proceedings, I became reasonably familiar with the General Utility Holding Company case; and in connection with that case, it is my recollection that the court upheld the Holding Company case. I certainly think that it has long been the law, and I was familiar with it, that in order to make a transaction tax free when you exchange an asset for the stock of a corporation, if there was then pending an agreement to dispose of the stock after it was issued, it was a taxable transaction, and I told Mr. McBride in no uncertain terms that under no circumstances would we make a commitment to do anything. The only

thing that we would do—he could do as he pleased—but we would arrange for the exchange of the stock of the corporation, and if at that time he walked off, that was all right, there was no obligation. He could go around and deal with anybody he wanted to, and there was no obligation on him. That was the extent of the transaction to which we were then committed. I am sure it was made plain, both to him and his lawyers.

So we filed an application with the Commissioner of Corporations of the State of California, after my return from Washington, and we got a permit. The application in some rough form had been prepared in my absence in Washington. The question, however, of the appraised value of the property was to be furnished by affidavit, furnished by Mr. McBride or his associates, as the Commissioner of Corporations of the [8] State of California would not issue stock in exchange for land unless there was an appraisal by a reputable realtor that the fair market value of the real estate would equal the value of the stock. The application was filed, and some days after that we obtained from Mr. McBride the affidavits showing the appraised value of the land in his opinion, and those were promptly forwarded by me to the Commissioner of Corporations, and almost immediately the Commissioner of Corporations issued his permit authorizing the exchange, and the exchange was consummated. Whether the exchange was consummated physically and completely on the 30th day of January, or the 1st or 2nd day of April, at this late date I am not



dead sure, but it was definitely consummated, and that one step of the transaction then remained complete; and at that point there was no obligation, express or implied, no agreement of any kind, no understanding, no nothing, with Mr. McBride.

Mr. McBride indicated, however, that if he were to go along, he was a little bit worried about personal liability. He had been told if that were so he had better form a corporation and have that so that if that step ever arrived, he could do that.

Now, I believe I was still in Washington when he formed that corporation. It was incorporated, in any event, under the laws of the State of California on March 8th. I am [9] not particularly familiar with the corporation, other than in connection with the transactions that we had with them. Certainly no part of that corporation—we had nothing to do with it, “we” now being Dr. Jacobs and his wife, myself or my office, had nothing to do with it.

It was incorporated by Mr. McBride’s attorneys. He put the money into it, we didn’t. We had no control of any kind over it in any way, shape or form.

The Court: Just omit the argument.

Mr. Layman: I am trying to make a statement of facts, your Honor.

If you conceive it to be an argument I am sorry. I think this is a statement of facts, sir.

The Court: Very well.

Mr. Layman: And if it appears to you to be an argument, I apologize, and I will try to continue to state facts, but I believe it to be a fact that we did not have any control of any kind whatsoever over the McBride people or that company. Now if the Court feels this is argument and not a fact, I am sorry.

The Court: Proceed.

Mr. Layman: The second transaction was a transaction whereby Hollywood Terrace, a corporation that I have just referred to, on the 5th or 6th of April—I'm sure the record shows which date, but which I don't remember on my feet [10] here at the minute—acquired all of the incorporated and outstanding stock of Hollywood Subdivision, Inc., and received in exchange a note therefor. Two or three days later—and there still is no commitment, no agreement, express or implied, of any kind as to any further extension—two or three days later—at this date I do remember it was the 8th of April—Hollywood Subdivision, Inc., was dissolved by the McBride interests, not by Dr. Jacobs. The payment of the money—there is a stipulation of facts which will be offered in evidence after I cease the opening statement—the payments that were made to Dr. Jacobs, in round figures—I have the exact figures, which will be offered in evidence—were \$28,000 in 1948, \$74,000 in 1949, \$12,000 in 1950, and \$7,500 in 1951.

In the alternative, in our position we have stated that if the Court should start this, regarding the steps in the transaction, there wasn't any reason

that they need stop at a particular point, and that if it was a sale of real estate, then we thought that we had the right to look at it and really look at it under its ultimate end, which would have meant a saving to the—cutting the taxes that had been set by the Department roughly in half. That is pleaded as an alternative.

Our first position is that stock was sold, nothing but stock was sold. There was no commitment to do anything at [11] the time that was sold. It wasn't an agreed program, and that it is a capital gain.

Unless at this time Counsel for the government has a further opening statement, or the Court has a question, I will proceed to offer evidence.

The Court: Well, we will now hear from Mr. Nyquist on his concept of the issues.

Opening Statement On Behalf of the Respondent  
By Mr. Nyquist:

First with respect to the little issue of the \$1,000 deduction for attorney fees, I don't know at this time whether petitioner is entitled to that or not, because I don't know enough about the facts, and I think that will have to depend entirely on the facts that are put in evidence. They will have to be facts rather than conclusions.

Now with respect to the principal issue, there is no dispute on the facts up to a certain point, because it is clear that the petitioner was engaged in real estate subdivision operations, that there were some negotiations of some sort between him and Mr. McBride, or the McBride Realty Company,

of certain property, in the early part of 1948, and it is also clear that at that time Mr. Layman had in his office a corporate charter that was not being used. I don't say he had a corporation, because it was just a charter that [12] had been issued some two years previously, and no stock had ever been issued. There were no corporate assets. The corporation had never engaged in any business transactions, so it was not at that time a really live corporation.

Now, as to exactly what happened after that point, I am not entirely clear as to the dates, and just how the transaction was managed. There is some confusion on that point, but apparently it is the petitioner's contention that the real estate was transferred by the taxpayer to the corporation in return for issuance of all the capital stock of the corporation then issued in the amount of, I believe, \$175,000, and that the taxpayer sold that capital stock rather than land, and it is the petitioner's contention, of course, that is a sale of capital assets.

On that point, Respondent says that assuming the Petitioners went through the form exactly as stated, the corporation, Hollywood Subdivision, Inc., had life of not more than a week, and even that was a very inert type of life. It merely held title to a piece of real estate for a week and was dissolved at the end of that period. It apparently never entered into any type of business transactions, and under those circumstances respondent's position is that this is one of the well-known exceptions to the general rule that corporate entities are usually re-

garded in and recognized for tax purposes. [13]

Here we have a corporation that was formed merely—or, rather, a corporation that was activated, I should say—merely for the purpose of establishing a favorable tax consequence to the taxpayer. It had no real enduring subsisting character, and under the cases such a corporation is not regarded as a separate entity. There are a number of cases which hold to the effect that when a corporation has no purpose—

Mr. Layman: Are we having an argument, or a statement of facts?

Mr. Nyquist: We have had a statement of petitioners' position. I am not citing our cases. I am stating our position on the petitioners' contention of facts.

Mr. Layman: It seems to me I was corrected by the Court for not giving a statement of facts but giving an argument, and I can see not one fact when you start citing cases.

The Court: Just don't get excited, and I will take care of that.

Mr. Nyquist: In other words, respondent's position in this case is that where a corporation has no purpose other than to hold bare legal title to certain real estate and does not engage in any corporate activity, the corporate entity will be disregarded, and this will be regarded here as merely a conduit of title to the real estate of the purchaser.

Now with respect to petitioners' alternative contention that if it was a sale of real estate they are

entitled now to claim instalment basis on the sale, respondent makes two points:

First, no facts have been pleaded which would justify a holding that—or which would support a holding that this was an instalment sale; and, secondly, even assuming that it were an instalment sale, the petitioner is not entitled to claim an instalment basis of reporting at this time, because he did not so elect on his original return.

The Court: You may proceed with your evidence.

Mr. Layman: At this time, may it please the Court, I offer in evidence a stipulation of certain facts which has been stipulated to by Counsel for the petitioners and Counsel for the respondent.

The Court: Are there any exhibits attached?

Mr. Layman: There is an Exhibit "A" attached, but it is a photostat of one letter, and that is the only exhibit.

The Clerk: It is not a joint exhibit, it is just Exhibit "A"?

Mr. Layman: Right. There is only one single exhibit.

Mr. Nyquist: We both stipulated to the facts. It is marked Exhibit "A." [15]

The Court: Mark it Exhibit A-1.

(The document above referred to was received in evidence and marked Exhibit A-1.)

Mr. Layman: I would like to be sworn as a witness, please.

The Court: You are familiar with the Code of

Ethics of the American Bar Association, I assume, concerning a lawyer trying his client's case and acting as a witness?

Mr. Layman: I have one of my associates handling the case, and I see nothing objectionable to what I am doing.

The Court: It is contrary to the rules, but we will permit you to testify.

Mr. Layman: Thank you.

Whereupon,

EMMETT S. LAYMAN

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Emmett S. Layman.

Mr. Carey: If your Honor please, my name is Kenneth S. Carey, and I am an attorney admitted to the—I am a member of the bar of the Tax Court of the United States, and I am associated with Mr. Layman, and I have appeared before the official proceedings in the Tax Court in this matter. [16]

Direct Examination

By Mr. Carey:

Q. Mr. Layman, you are an attorney-at-law, duly admitted to the State Bar of California?

A. I am.

Q. And have been for some 30 years?

A. Right.

(Testimony of Emmett S. Layman.)

Q. You are in general familiar with the problems presented—the facts presented in the petition before this Court today?

A. I am, and the reason I am appearing here, and notwithstanding the rules of the American Bar Association, is because I felt I knew more about them than anyone else, and the Court would get a better statement of the simple truth from me than anyone else.

The Court: Just a moment. We will dispose of that matter right now. The rule of the American Bar Association Code of Ethics is that if the attorney is going to be a necessary witness, unless it is a matter of identifying some document, more or less, that he should not participate in the trial of the case, but should have associates do that. You will find that in Volume 37 of American Bar Association Reports.

Proceed. [17]

Q. (By Mr. Carey): With respect to the attorney's fees that were charged against—that were deducted by the petitioners, S. Nicholas Jacobs and Dolores I. Jacobs, in their 1948 return, would you tell us in general what those attorney's fees related to?

A. The first item of service was after the 1st day of January, 1948, and the last item of service was during the month of May, 1948. It dealt primarily with what were the best steps to take to accomplish some of the things that were done in connection with the three steps, namely, the exchange of the stock



(Testimony of Emmett S. Layman.)

for the land, the sale of the stock, and the ensuing third step, when the subdivision was dissolved by—Hollywood Subdivision, Inc., was dissolved by the McBride people; yet, incidentally, included other things, such as the consideration of the bond issue which was being put on the properties in question with the street work under the statutes of 1911, and that dealt only with the street work in connection with this property, as I understand it, this property now being Hollywood Subdivision No. 3, and not some other property that was still on hand and owned by Dr. Jacobs on December 31, 1948.

As far as I know, I never did anything in connection with any property that was still owned by Dr. Jacobs, or his wife, after—I say “anything,” I am speaking in this period [18] of time now for which these services were rendered. I did nothing in that period of time which had anything to do with any property that he continued to own after December 31, 1948.

Q. And the \$1,000 was actually paid to you?

A. It was.

Q. As billed by your office to Dr. and Mrs. Jacobs?

A. I don't know who the bill went to; I don't remember whether it was—whether the “Mrs.” was included or not.

Q. And the services related solely to, should we say, the transaction before the Court today, in generalized terms, with the exception of the street work that you mentioned?           A. And the—

(Testimony of Emmett S. Layman.)

Mr. Nyquist: If your Honor please, I object. This witness doesn't need any leading questions.

The Court: Your questions are very leading. Rephrase your question. I will sustain the objection.

Q. (By Mr. Carey): Did these legal services which you performed, for which the fee was paid by the petitioners herein, relate to any other transaction of—relate to other land than that involved in this particular proceeding today? A. No.

Q. Had these facts been before the government at [19] every stage of the proceedings?

A. I do not—

Mr. Nyquist: Objected to as irrelevant.

The Court: That is wholly irrelevant in this case.

Q. (By Mr. Carey): Now, with relation to Hollywood Subdivision, Inc., would you tell us the steps relating to the incorporation of Hollywood Subdivision, Inc.?

A. Hollywood Subdivision, Inc., was incorporated in August, 1946.

Mr. Layman: Did we stipulate to those names, Mr. Nyquist? There is no sense in putting them in twice, if we did.

Mr. Nyquist: Yes, Paragraph 4 covers that point.

Mr. Layman: Then I see no sense in repeating it. May I have that, so we won't repeat on things we have got in the record.

Mr. Nyquist: Yes.

Q. (By Mr. Carey): Now, going back, the stip-

(Testimony of Emmett S. Layman.)

ulation states that it was incorporated in August, August 28, 1948. A. 1946.

Q. '46, I beg your pardon. And would you, then, in general, cover the period from the time of incorporation until early 1948 with regard to the corporation? [20]

A. The purpose of the incorporation was to acquire certain of the land in exchange for stock in the tax-free transaction between Dr. Jacobs and the corporation. Actually an application was filed with the Commissioner—

Mr. Nyquist: If your Honor please, I move that that last part be stricken as a conclusion of the witness. The purpose of the corporation is stated in the corporate charter, and his statement as to a corporation as an inanimate entity has no purpose other than stated in the charter. If he is stating some individual, I think he should state what individual he has in mind in stating that purpose.

The Court: I think the objection is well taken.

A. Well, the purpose—that becomes a little bit complicated, only in this one sense, that I was one of the incorporators and it was my purpose and it was also Dr. Jacobs' purpose, who was my client.

Mr. Nyquist: Your Honor, I object to this witness testifying to Dr. Jacobs' purpose, and I move that his testimony on that point be stricken.

Mr. Layman: Well, I think I am the attorney for Dr. Jacobs, and I think I do know that was his purpose.

(Testimony of Emmett S. Layman.)

The Court: You will omit statements of the purpose of Dr. Jacobs. He is available as a witness, isn't he?

Mr. Nyquist: Will your Honor strike the statement [21] previously made, about Dr. Jacobs' purpose?

The Court: That will be stricken.

The Witness: Very well. I was the attorney for Dr. Jacobs and for the company. I had advised Dr. Jacobs that in my opinion he should not continue in any subdivision of selling real estate in his own name, which he had done theretofore under questionable——

Mr. Nyquist: Your Honor, I don't know whether Dr. Jacobs is in the courtroom now or not; but if he were here this would constitute a waiver of any attorney-client privilege. But in that absence, I would like to know if there is a specific waiver, so we won't have to go in that whole matter of what he advised Dr. Jacobs.

Mr. Carey: I don't think Counsel has the right to raise the attorney-client privilege. I think that is on the part of the attorney and client, and not on the attorney himself under the applicable rules of evidence.

The Court: You are correct on that. He may testify.

Mr. Layman: We didn't waive that. We are waiving only that which I testified to.

Mr. Nyquist: I don't think there can be a partial waiving, that he can testify to a certain portion

(Testimony of Emmett S. Layman.)

of the transaction. As a matter of fact, the rules under attorney-client privilege permit only the Court to raise the objection in the answer of the client. If the client is in the room, [22] he is presumed to waive it if he makes no objection.

The Court: Is Dr. Jacobs in the room?

Mr. Layman: He is not.

The Court: Will he be here?

Mr. Layman: I think not. If the Court desires him to appear here he can appear. There is certainly no intention on our part to keep him away if Counsel thinks there is some fact or truth to be brought out because of his absence.

Mr. Nyquist: I am merely bringing out that we can't have part of certain confidential communications put in and privilege later claimed if we go into cross-examination on the rest of it. I am certainly not going to try to claim such a privilege if it is being waived, or has been waived, but I make it a point there must be a definite waiver. We can't have part of the evidence in on these transactions, or communications between the attorney and the client, without opening up the whole field.

The Court: What is to be your disposition, Mr. Carey?

Mr. Carey: I think there is this involved in the case: Mr. Layman was president of the Hollywood Subdivision, Inc., and can testify as to corporate matters without in any way involving an attorney-client privilege in a great many instances. As to the rest of it, I think Mr. Layman is [23] prepared to

(Testimony of Emmett S. Layman.)

testify as to the conversations which he discussed, and the matters which he discussed with Dr. Jacobs, in order to have the whole matter come before the Court.

The Court: We will proceed. Will you repeat your question?

Q. (By Mr. Carey): What we are trying to get, Mr. Layman, is this period between August of 1946 and early 1948. As president of the corporation, you undoubtedly had knowledge of the corporate affairs, did you not? A. I did.

Q. And would you relate some of those—would you tell us about this period between August, 1946 and early 1948, as president of the corporation?

A. In the corporation we originally started out to acquire Subdivision 2 in exchange for all of the capital stock of that company. That application was duly filed with the Commissioner of Corporations of the State of California. Dr. Jacobs became ill, he had an operation, he went to Nevada, he wasn't able for a substantial period of time to attend to his affairs, and as a result that proceeding, insofar as No. 2 was concerned, was completely abandoned. In connection with that plan—and I am speaking now of Subdivision 2—in addition to considering the undesirability of Dr. Jacobs having complete personal [24] liability in connection with sales of land or street contracts, we did look into the question of income taxes, which originally did not even consider the problem of whether or not we would sell the stock, but what would be the effect on Dr. Jacobs or

(Testimony of Emmett S. Layman.)

the effect on the corporation, or the effect on them both jointly if, instead of him engaging in the business personally, he engaged in the business—or he had this corporation engage in the business of selling lots. At that time we originally had not considered whether or not we could take the ultimate step of selling the stock.

Mr. Nyquist: Your Honor, I object to all this line of testimony as to what was considered and wasn't done in earlier years, as being immaterial and irrelevant.

Mr. Carey: I think, if your Honor please——

The Court: You can testify.

Mr. Carey: If your Honor please——

The Witness: He said I could testify.

The Court: Now, just a minute. You are a witness at the present time, not an attorney. Keep that in mind.

The Witness: I beg your pardon.

The Court: Keep that in mind.

The Witness: I will try to.

The Court: Proceed. [25]

Q. (By Mr. Carey): During this period of time, then, the corporation did not complete the issuance of the stock under California law because of, shall we say, Dr. Jacobs' health?

Mr. Nyquist: Objection, your Honor, to leading questions again.

Mr. Carey: I will withdraw the question.

Q. (By Mr. Carey): Why did not the corpora-

(Testimony of Emmett S. Layman.)

tion secure the issuance of the stock during this period of time?

The Court: You may answer.

A. Proceeding on Subdivision No. 2 was abandoned, as I understand it, because of the complications of the time element that arose out of Dr. Jacobs' illness. The question was brought into active being again early in 1948, when Mr. Frank McBride, Junior, who does business as a real estate broker in Sacramento, California, under the name of McBride Realty Company, and who then did, came into my office in San Francisco with Dr. Jacobs. I do not purport to remember in detail each word that was said by each person present.

Mr. McBride is in the real estate business, and what he wanted—perhaps, before I say that, not only was he in the real estate business, but he had been the agent who had sold the lots that had been sold in Subdivision No. 2, and the operation had been successful, or whatever word should [26] be used for the result that he accomplished. He wanted either the right to sell those lots, and when he was told he couldn't have that, because we weren't interested in continuing and getting into the same picture that they had, he said, "Well, can I buy it, and buy it now?" He was referring to the land that was then in Hollywood Subdivision No. 3. He was told that he could not buy it, that the land was not for sale, and that he would not be permitted to be a real estate broker in the sale of the lots. However, he was also told that he might be able to acquire con-



(Testimony of Emmett S. Layman.)

trol of the land by buying the stock of the corporation that owned it all.

He was also told that there was nothing that could be done about it, although he was quite anxious to proceed.

The Court: He was told by whom?

The Witness: By me, in the presence of Dr. Jacobs.

Mr. Nyquist: I move that last statment, about "he was quite anxious," be stricken as a conclusion of the witness.

The Court: That will be stricken.

Q. (By Mr. Carey): Did Mr. McBride at this time offer—make an offer to purchase the stock, make a firm commitment—excuse me—an offer to purchase the land at this time?

A. As I understand the words "firm commitment" he did not. He wanted to know whether he could buy it. He didn't [27] say, "I offer to buy it for \$100, or \$200," or any other figure. He said, "I would like to buy it if you will sell it. Will you sell it to me?"

Q. And what did you say?

A. He was told by me in the presence of Dr. Jacobs, and on behalf of Dr. Jacobs, "No," it would not be sold to him. I don't wish to in any way go back on the Court's ruling, and I will try to state it in a fashion that will be factual and not a conclusion, that Mr. McBride told me that springtime was the time to start selling real estate, and that that was the reason that he hated to see me go away, because

(Testimony of Emmett S. Layman.)

of the time element, and didn't I have somebody else in my office that could handle it in my absence, and I told him I did not, that I would have someone in the office do as much as I felt could be done in my absence.

Q. Was there any commitment, or any deal, or any other commitment between either Dr. Jacobs or Hollywood Subdivision, Inc., to Frank McBride, Jr., or any other person at this time?

Mr. Nyquist: Objection, your Honor. That calls for the conclusion of the witness as to whether there was a commitment. I think he can testify as to what was said, but whether what was said is sufficient to constitute a commitment, I believe, is a matter for determination by the Court, and would be a conclusion on the part of this witness. [28]

The Court: The objection is well taken.

Q. (By Mr. Carey): Did you, Mr. Layman, in any way at this time indicate that you would be willing to sell land to Mr. McBride, either from Dr. Jacobs or the corporation, either or both?

A. Mr. McBride was told, in what I would describe as unmistakable language, by me, that under no circumstances would Dr. Jacobs or Hollywood Subdivision, Inc., sell to Mr. McBride or anybody else so that he, Mr. McBride, could act as the agent in the sale to anyone else, any part of the real estate. He was told that there would be no program for a commitment, that we could run out, he could run out of it, and that there was never to be anything bind-

(Testimony of Emmett S. Layman.)

ing, but that nothing could be done until after I returned from Washington.

Q. Shortly after this time did you go to Washington?      A. I did.

Q. And remained there until—when did you return, approximately?

A. Some time early in March of 1948.

Q. Of 1948? At this time, with reference to the stock of Hollywood Subdivision, Inc., what steps were taken to procure the issuance of the stock?

A. In my absence an application to the Commissioner of [29] Corporations had been prepared for filing. The two things that were left—I say “two,” there may have been more than that that tie in that I don’t remember at the minute, because I don’t remember every word that was in the application. It could be obtained if necessary.

The two things that were left out, however, were the number of shares and the value of the land. The Commissioner of Corporations will not issue a permit to exchange stock for land unless there is an appraisal by reputable real estate brokers familiar with the property, and immediately, or shortly after my return, I am sure that Mr. Frank McBride, Jr., and his brother, Thomas, who is an attorney, were in my office, and we discussed the matter further, and I told Mr. McBride that what we would need would be an appraisal from him that we could submit, so that I would know what figures could be used, and we had a discussion. There may have been some correspondence on it.

(Testimony of Emmett S. Layman.)

We got a figure of \$175,000, which turned out afterwards not to be as good as we thought. The application was filed with those figures. At that time we did not have the appraisals in form to submit to the Commissioner of Corporations, and then Mr. McBride and I—I am speaking now of Mr. Frank J. McBride, the realtor, not his brother—Mr. McBride sent to me an affidavit, in affidavit form, an affidavit of a Mr. Lawrence. I have forgotten his first name now, [30] but that is available, if desired, and of Mr. McBride himself, stating that in their opinion the fair market value was so much value, and in as-is condition, and I immediately transmitted those two appraisals to the Commissioner of Corporations of the State of California, and within two or three days thereafter, namely, on the 29th day of March, 1948, the Commissioner issued his permit, authorizing us to exchange 1750 shares of stock for—

Mr. Nyquist: Objection, your Honor, to the witness stating the contents of the permit that was issued. The best evidence would be the permit itself.

The Witness: It seems to me—

The Court: You are a witness, you are not an attorney at this time.

Mr. Carey: If your Honor please, the permit is available.

The Court: I think he may testify, if he knows.

Mr. Carey.: I think the contents are fresh in Mr. Layman's mind.

Mr. Layman: Show the original to Mr. Nyquist.

The Court: Just a minute, now.

(Testimony of Emmett S. Layman.)

Mr. Nyquist: My point is, your Honor, we are dealing with various transactions and events, and exact dates might be quite important.

Mr. Layman: Well, it is March 29th, but [31] I would rather offer that than fight the objection.

Mr. Carey: May we read it into evidence?

The Court: You may offer it.

Mr. Layman: I think we will offer it in evidence.

Mr. Nyquist: Having seen the document, your Honor, I want to be sure his testimony conforms to the written document. I won't require that he put it in, now that I am satisfied on the point.

The Court: Proceed.

Q. (By Mr. Carey): Mr. Layman, you testified that the permit to issue stock was granted by the Commissioner of Corporations on what date?

A. The 29th day of March, 1948.

Q. And what happened after that?

A. Almost immediately, and I cannot at this date be positive whether it was the 30th or 31st of March, or the 1st or 2nd of April, but I do know it was not later than the 2nd of April, the stock was issued in exchange for certain described lots which—do we need—if the Court wants the numbers I would be glad to put them in. I do not remember the lot numbers, the numbers of the lots, offhand, but I can verify that if that is deemed necessary.

The records indicate that the date was March the 30th. It could be, however, that it was done on the following [32] day, or as I have indicated there.

At that time we had—I say “we,” I'm sorry. As

(Testimony of Emmett S. Layman.)

far as I know, the doctor had no arrangement, no agreement, to sell stock to Mr. McBride. Mr. McBride is in court, and he can testify that he did have such an arrangement, if that be true. I believe there was no such an arrangement, but of course it could have been made in my absence.

Mr. Nyquist: Your Honor, I move this last argumentative portion of the statement be stricken.

The Court: It should be stricken, technically, but we will let it stand.

A. (Continuing): And thereafter, and I am sure that this was myself rather than Dr. Jacobs, because I still was the president of Hollywood Park at this point—I'm sorry, I was still president of Hollywood Subdivision, Inc., at this point; and we did arrange for the sale of Dr. Jacobs' 1750 shares of the common stock of Hollywood Subdivision, Inc., to Hollywood Terrace, Inc.

The stipulation of facts does contain some reference to that corporation, and I will not elaborate on it here, but just in the interest of continuity, so that it is in the record, a reference could be made to it at this point.

At that time Dr. Jacobs received a promissory note of Hollywood Terrace, Inc., which had little or no assets other than the stock of Hollywood Subdivision, Inc., which it [33] then acquired, which stock was pledged by an instrument of pledge to Dr. Jacobs, and the stock was reissued in the name of Hollywood Terrace, out of Dr. Jacob's name into the

(Testimony of Emmett S. Layman.)

name of Hollywood Terrace, Inc., and then was re-issued into the name of Dr. S. Nicholas Jacobs, pledgee.

I believe—if the date is important, perhaps I should check the record a minute. My recollection is April 5th as the date of that transaction. If it is important and Counsel is worried about it, I would prefer to check the record rather than stating it.

At that point in the transaction Dr. Jacobs was the owner of a promissory note secured by—promissory note of Hollywood Terrace, Inc., secured by 1750 shares of the common stock of Hollywood Subdivision, Inc., Hollywood Subdivision, Inc., continued to be the owner of the real estate, and Hollywood Terrace was the owner of the 1750 shares, subject to the pledge to secure the promissory note that I have just mentioned.

On the 6th of April, and this, too, is part of the stipulated facts, particularly the photostatic copy of the letter, Mr. McBride requested that we permit him to dissolve Hollywood Subdivision, Inc., and a day or two later that permit was forthcoming, and Hollywood Subdivision, Inc., was dissolved.

At the end of that third transaction, [34] namely, the dissolution of Hollywood Subdivision, Inc., it ended up by Hollywood Terrace, Inc., being the owner of the real estate that we have been talking about. Hollywood Subdivision, Inc., disappears out of the picture, and Dr. S. Nicholas Jacobs is now the owner of a promissory note in the same sum, but in-

(Testimony of Emmett S. Layman.)

stead of being secured by a pledge of stock, is secured by a mortgage on the real estate.

Q. With respect to the dissolution of Hollywood Subdivision, Inc., was that done at Dr. Jacobs'—so far as you know, to your knowledge, was that done at Dr. Jacobs' request?

A. That was done, as is indicated by this letter, at the request of the McBride interests. Technically, I think it was done at the request of Hollywood Terrace, Inc., and I wouldn't want to think that I didn't recognize that distinction.

Q. To your knowledge, did Dr. Jacobs at any time ever own any stock in Hollywood Terrace, Inc.?

Mr. Nyquist: Objection, your Honor, for two reasons. One, the question is bad, and, two, the fact that it is stipulated.

The Court: If it is stipulated, there is no purpose in asking it.

Mr. Carey: I withdraw the question.

The Court: Is it stipulated, Mr. Carey? [35]

Mr. Carey: It is, your Honor.

I have no further questions at this time.

The Court: Are you tendering the witness for cross-examination?

Mr. Carey: Yes.

The Court: You may cross-examine.

Mr. Nyquist: May we have our mid-morning recess at this time, your Honor?

The Court: We will take a short recess.

(Short recess.)



(Testimony of Emmett S. Layman.)

Cross-Examination

By Mr. Nyquist:

Q. Mr. Layman, going back to this matter of the three subdivisions that you have testified to, I believe Hollywood Park No. 1, Hollywood Park No. 2 and Hollywood Park No. 3. A. Yes.

Q. In the early part of the year 1948 was there any of the land in Hollywood Park Subdivision No. 1 left?

A. I couldn't answer that question. I think not, but I couldn't say.

Q. I see. But do you recall about No. 2?

A. My understanding was that—and I am trying to avoid using that word you just excepted to about Mr. McBride's anxiety—but my understanding was that Mr. McBride sold [36] out all of No. 2. He can answer that better than I, but I believe they were all sold.

Q. Your answer is you do not know; is that correct?

A. That is correct; but I believe they were.

Q. But the land that was transferred to the corporation and which later became the property of McBride interests, that was entirely in Subdivision 3, was it not? A. Correct.

Q. Mr. Layman, did Hollywood—you were the president of Hollywood Subdivision, Inc., I believe you testified, up to the 5th day of April, 1948?

A. Well, I was the president. I think it was the

(Testimony of Emmett S. Layman.)

5th day of April when I got out. The company's records that you subpoenaed I am sure will show that.

Q. And during the period that you were the president of Hollywood Subdivision, Inc., did it ever have a bank account?      A. It did not.

Q. Did it ever pay any salaries to any employees?      A. It did not.

Q. Did it ever have any books of account?

A. It did not.

Q. Did it ever buy or sell any real estate?

A. So long as I was president of it, it did not. I would like to correct that, in this sense: You are not [37] including in that the exchange by which we acquired that transaction and issued our stock, other than that one transaction? So long as I was president, it neither bought nor sold real estate. I just want to make sure that exchange I am excluding from my testimony.

Q. Did it ever enter into any other business transactions for the purchase or sale of any type of property?

A. Well, not as far as purchase or sale of other types of—

Q. Well, that is all my question relates to, is purchase or sale.      A. Oh.

Q. Mr. Layman, who is John P. Fryer?

A. John P. Fryer was an associate, a lawyer who was working in my office, employed by me. I call him one of my associates, just as Mr. Carey is now.

(Testimony of Emmett S. Layman.)

He was at the time. He left me shortly after I returned from Washington.

Q. And who is or was Daisy G. Kerner?

A. She is my secretary, my office manager, the No. 1 girl in my office. I have five women working in my office.

Mr. Nyquist: No further questions.

Redirect Examination

By Mr. Carey:

Q. Mr. Layman, Mr. Nyquist asked you if Hollywood Subdivision, Inc., ever engaged in any business transactions. [38] Do you recall whether it did or did not?

A. Well, business transactions, we had—the work of the street improvement, whether that was done in the name of Hollywood Subdivision, Inc.—it probably was not, because it was done—that's correct, it was not. No, it did not enter into any other business transactions. Correct. I was about to get confused.

Mr. Carey: No further questions.

The Court: You are excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Carey: Mr. Robert L. Schwerin.

Whereupon,

## ROBERT L. SCHWERIN

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Robert L. Schwerin, and my address is 781 Market Street, San Francisco.

## Direct Examination

By Mr. Carey:

Q. What is your occupation, Mr. Schwerin?

A. Certified public accountant. [39]

Q. Have you been, or were you retained by the petitioners, Dr. S. Nicholas Jacobs and Dolores I. Jacobs, to perform accounting services for them?

A. Yes. I have been the accountant for Dr. Jacobs since 1926.

Q. With relation to the transaction—well, shall we say the liquidation of the note given to Dr. Jacobs by Hollywood Terrace, Inc., are you familiar with the transaction as it occurred through the years from 1948 to 1951?

Mr. Nyquist: Objection, your Honor, to this line of testimony. There are no allegations of fact in the pleadings concerning any of the events after this year, and it is completely irrelevant to the principal issue here.

The Court: What year did the question call for?

Mr. Nyquist: 1948 is our year before the Court, your Honor.

(Testimony of Robert L. Schwerin.)

The Court: And what year did this question call for?

Mr. Carey: I incorporated 1948 to 1951, but I will break it down and start with 1948.

The Court: Proceed.

Mr. Nyquist: I might further object, even insofar as 1948 is concerned. There are no allegations of fact in the petition on this matter of payment, and they appear to be——

The Court: We do not have a question before us now. [40]

Q. (By Mr. Carey): With relation to the year 1948, Mr. Schwerin, do you know how much money was paid to Dr. Jacobs by Hollywood Terrace, Inc., on behalf of this note?           A. Yes, sir.

Mr. Nyquist: Objection, your Honor. In the first place, it is irrelevant what was paid on this note. The stipulation of facts stipulates that the fair market value was \$125,000; that was the figure in which it was included in the taxpayer's return, and that is the figure which was used in the deficiency notice; therefore, there is no issue of value of the note, and there are no allegations in the petition with respect to dates of payment. I will make the further objection——

The Court: How is this pertinent?

Mr. Carey: If your Honor please, the government is taking the position that this was the sale of land and the sale of stock. We are carrying it on further and breaking it down in the ultimate steps in the sale of land, if that is the position that the government is taking.

(Testimony of Robert L. Schwerin.)

The Court: Proceed.

Mr. Nyquist: I make the further objection, although this witness has testified he did some accounting for Dr. Jacobs, the question is what payments Dr. Jacobs received, and I think Dr. Jacobs is the only man in a position to know what [41] payments Dr. Jacobs received.

Mr. Carey: I will reframe my question.

Q. (By Mr. Carey): Are you familiar with the books of account kept by Dr. Jacobs of his financial affairs? A. Yes, I am.

Q. And do those books of account reveal certain payments received in the year 1948?

A. They do.

Q. From this note in question, what were those payments?

Mr. Nyquist: Objection. Further objection, your Honor.

The Court: Objection overruled. He may answer.

A. The payment—the amount paid in 1948 was \$28,364.57.

Q. Have you computed, on the basis of profit that you—pro rata profit based over the period of the payments of the notes—what profit was realized on that payment? A. Yes.

Mr. Nyquist: Objection, your Honor. This is a matter—

The Court: We have no question before us.

Mr. Nyquist: —on which we have no allega-

(Testimony of Robert L. Schwerin.)

tion. [42] He was asked whether he made a computation.

The Court: Well, we will let him testify.

Mr. Nyquist: All right.

The Witness: The gross profit to be realized on this transaction—

Mr. Nyquist: Objection, your Honor. This response is not in answer to the question. The question called for a yes or no answer.

The Court: He answered "Yes."

Q. (By Mr. Carey): What was that computation?

Mr. Nyquist: That is the point I object to, your Honor. The pleadings contain no allegation of fact with respect to—

The Court: It may be immaterial, but we will hear it.

A. The calculation was made on the basis of the stipulated prices, which are sale prices, \$125,000, and the cost of \$90,858.47, which gives us a gross profit to be realized, of 72.7 per cent. In 1948, 72.7 per cent of the amount collected of \$28,364.57 amounts to \$20,621.60.

Q. (By Mr. Carey): Have you—on the basis of that computation, have you calculated Dr. and Mrs. Jacobs' income tax liability for the year 1948? [43]

A. Yes, sir.

Q. And what was that computation?

The Court: Well, how is that pertinent?

Mr. Carey: I think, your Honor, it is a continuation of the breaking down of the steps that the gov-

(Testimony of Robert L. Schwerin.)

ernment insists right along has to be done in this transaction.

The Court: I haven't heard anything to that effect this morning. The negotiations which you have had with reference to discussions with government officials have no place here. This is a trial.

Mr. Carey: I think, your Honor, that the allegation of the fact that there was no deficiency, perhaps that is an ultimate fact. The allegations which we have made concerning that there was no deficiency in the year 1948 is borne out by the testimony of the witness.

The Court: He may answer.

A. I recalculated the tax—

Mr. Nyquist: Your Honor, I think perhaps the petitioner misunderstands the procedure. I think this is properly a matter for Rule 50 Computation, which we are not called upon to make at this time.

The Court: It may be, but we will hear it.

A. I recomputed the tax for 1948 based on the net income as shown in the revenue agent's report, and I revised the profits on this transaction to \$20,-621.60, and on the [44] bases of this recomputation the tax was \$55,021.49. They paid, Dr. Jacobs and his wife, had paid \$62,470.20, which would result in an overpayment of \$7,448.71.

Q. Or a net decrease in taxes of how much, did you say?      A. \$7,448.71.

Q. With reference to the basis which you use for computing profit on each one of these payments, what adjustment did you make, if any, with respect to the



(Testimony of Robert L. Schwerin.)

\$1,000 attorney fees paid by Dr. Jacobs to Mr. Layman?

A. I deducted the \$1,000, or added it to the cost, deducted it from the gross profit.

Q. I see. Now with respect to the year 1949, did you do exactly the same thing? A. Yes.

Q. Would you give us those computations?

A. In 1949 the doctor—

Mr. Nyquist: Objection, your Honor.

The Court: Now is that pertinent? What difference does it make in this?

Mr. Carey: Well, I think, if I am not mistaken, your Honor, we have taken the position in the petition that if this is to be regarded as a sale of land, as a step transaction, that it should be regarded completely so, and that the pay-out over a period of several years should be [45] taken into account as well, rather than crowding all of the income from this sale of land, so to speak, into one taxable year when, in fact, it was not so received by the taxpayer.

The Court: The details of what happened in 1949, 1950 and 1951, how are they pertinent at the present time?

Mr. Carey: To show, your Honor, that no greater amount than 30 per cent of the purchase price was received in 1948, the tax year in question; to show, if your Honor please, the ultimate pay-out when the note was ultimately paid off, and the effect upon Dr. Jacobs' taxes for the four years which would be affected if we break it down into those steps.

The Court: He may answer.

(Testimony of Robert L. Schwerin.)

The Witness: The payments received by Dr. Jacobs in 1949 amounted to \$74,762.98.

Q. (By Mr. Carey): And the net profit?

A. The net profit, on the basis stated before, would be \$54,352.70.

Q. And the recomputation of taxes?

A. The recomputation of taxes on the same basis of 1948 and taken from their tax return, which has not been audited, would be \$40,703.82. They have paid \$11,293.88. This would result in additional tax of \$29,409.94. [46]

Q. And did you make the same computations for the year 1950?           A. Yes, sir.

Q. Would you give us those computations?

A. Yes, sir. In the year 1950 the doctor collected \$12,225.77, and based on the 72.7 per cent ratio, the profit would be \$8,888.16.

Q. And the recomputation of the taxes, what would that show?

A. The recomputation of the taxes for 1950 would be—the tax would be \$23,263.61. They paid \$19,119.16, which would result in an additional tax of \$4,144.45.

Q. Did you perform the same function for the year 1951?

A. Yes. In 1951 I had to use a figure within a—approximate figure—but it is positive within \$100 of the actual amount, because I didn't have access to the records when I made this calculation last night.

The Court: What did you base it on, if you didn't base it on the records?

(Testimony of Robert L. Schwerin.)

The Witness: I based it on the sheets I had, which had all the contracts—lot contracts—but I couldn't compute the interest which was paid.

The Court: The books do not show this?

The Witness: Yes, sir; they show it. We [47] could procure them, but last night I was checking them, and I didn't have the calculations, but I did have the lots and amounts of money collected. It is just a matter of interest that I collected during the year, but I am positive that I did not collect the amount of money I have estimated.

The Court: Proceed.

The Witness: \$500 would be the collection, and the actual contracts collectible at this point were \$7,241—\$7,201.41. They paid these collections, which would include \$300 interest. The profit would amount to \$5,452.50.

Q. (By Mr. Carey): And the recomputation of taxes, what would that show?

A. It shows a tax of \$13,417.10, and the tax paid shows \$10,677.68, and on additional tax of \$2,810.42. It shows on the entire transaction that they collected \$122,853.42.

Mr. Carey: That is all, your Honor.

#### Cross-Examination

By Mr. Nyquist:

Q. Mr. Schwerin, did you make the original entries in these books from which you derive these figures?

A. I made these all on my own work sheets.

(Testimony of Robert L. Schwerin.)

Q. Your figures are derived from your work sheets, you say? [48]           A. Yes.

Q. Who makes the entries in Dr. Jacobs' books, if you know?

A. Well, he has a bookkeeper at the hospital that would handle his individual books.

Q. I see. Do you have his books here?

A. No, I do not.

Mr. Nyquist: I move the entire testimony of the witness be stricken, your Honor.

The Court: We will let it stand.

Mr. Carey: May I see those, Mr. Nyquist?

Mr. Nyquist: Yes.

Q. (By Mr. Nyquist): Did you prepare Dr. Jacobs' 1948 income tax return?

A. Yes, sir; I did.

Q. Is this it?           A. Yes, that is it.

Q. That is his return?

A. That's right; yes, sir.

Mr. Nyquist: At this time I will offer in evidence a photostatic copy of Dr. Jacobs' 1948 income tax return.

The Court: Of what year?

Mr. Nyquist: 1948.

The Court: It will be received as Exhibit B.

(The document above referred to was received in evidence and marked Respondent's Exhibit B.) [49]

Form W-4  
Treasury Department  
U. S. GOVERNMENT PRINTING OFFICE

**WITHHOLDING STATEMENT—1948**  
Wages Paid and Income Tax Withheld

**ORIGINAL**  
Do Not Lose This Statement

**EMPLOYEE TO WHOM PAID** (Print name, full address, and Soc. Sec. No.)

**Dr. S. H. Jacobs** 567 06 5183  
2100 Pacific  
San Francisco

**TO EMPLOYEE:**

You may use the form on the back of this original Form W-2 as your income tax return *under certain conditions*. Before you use it, read the instructions on the back of the attached Employee's Copy.

**DO NOT WRITE IN THIS SPACE—FOR COLLECTOR'S USE ONLY**

**EMPLOYEE:** Change name and address if not correctly shown)

|   |                                     |
|---|-------------------------------------|
| Total wages (before pay-roll deductions) paid in 1948 | Federal income tax withheld, if any |
| 6000.00   | \$ 610.40                           |

|                       |    |  |
|-----------------------|----|--|
| Tax                   | \$ |  |
| Credits               | \$ |  |
| Balance due or refund | \$ |  |
| Interest on refund    | \$ |  |
| Total                 | \$ |  |

**EMPLOYER BY WHOM PAID** (Name, address, and S. S. identification No.)

**NUTLEY MEDICAL SERVICE CO.**  
1000 Market Street  
San Francisco, California

**RESPONDENT'S EXHIBIT B**  
Admitted March 27, 1953.

U. S. Treasury Department  
Internal Revenue Service

**EMPLOYEE'S OPTIONAL INCOME TAX RETURN**  
Read carefully the instructions on the back of Employee's Copy

**1948**

- Write total of wages shown on this and all your other 1948 Withholding Statements \$.....
- Write total of all other wages, dividends, and interest \$.....  
If line 2 is over \$100, or if you had any other income (such as rent, etc.), use Form 1040 instead of this form.
- Add lines 1 and 2. Write total here \$.....  
If line 2 is \$0,000 or more, use Form 1040 instead of this form.
- If you were a married person in 1948:
  - Write name of your wife (or husband) .....
  - Did your wife (or husband) have any income? (Yes or No) .....
  - If so, is it included in line 3? (Yes or No) .....
  - If line 3 includes income of both husband and wife, show husband's income \$.....; wife's income \$.....
  - Did your wife (or husband) receive more than half of her (or his) 1948 support from a parent or other close relative? (Yes or No) .....

**YOUR 1948 EXEMPTIONS**  
Do not list yourself or your wife (or husband). One will be counted for you; also one for your wife (or husband) if this is a combined return or if she (or he) had no income and was supported by you.  
In addition, one will be counted for each dependent you list below—each dependent listed must meet all three of the following conditions:  
a. He or she received over half of his or her 1948 support from you.  
b. He or she had less than \$500 income in 1948.  
c. He or she was a close relative as defined in the instructions.  
NOTE—If this is a combined return of husband and wife, list dependents of both and write letter "W" after names of dependents supported by wife.

|                   |                      |
|-------------------|----------------------|
| (Full name) ..... | (Relationship) ..... |
| (Full name) ..... | (Relationship) ..... |
| (Full name) ..... | (Relationship) ..... |
| (Full name) ..... | (Relationship) ..... |

I declare under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief, and that ALL MY 1948 INCOME IS REPORTED HEREON.

Signature .....

(Date) .....

Signature .....

(If this is a combined return of husband and wife, it must be signed by both.)

- What is your occupation? .....
- How many employers did you work for in 1948? .....

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be clearly documented and supported by appropriate evidence. This includes receipts, invoices, and other relevant documents that can be used to verify the accuracy of the records.

In addition to maintaining accurate records, it is also crucial to ensure that the records are organized and easy to access. This can be achieved by using a systematic approach to filing and labeling documents. Regular reviews of the records should be conducted to identify any discrepancies or errors and to ensure that the information is up-to-date and relevant.

The second part of the document focuses on the importance of transparency and accountability in financial reporting. It highlights the need for clear communication and disclosure of all financial information to the relevant stakeholders. This includes providing detailed explanations of any significant transactions and ensuring that the information is presented in a clear and concise manner.

Finally, the document concludes by emphasizing the importance of ongoing monitoring and evaluation of the financial reporting process. It suggests that regular audits and reviews should be conducted to assess the effectiveness of the internal controls and to identify any areas for improvement. This will help to ensure that the financial reporting process remains robust and reliable over time.

FORM 1040

U. S. INDIVIDUAL INCOME TAX RETURN

587

1948

For calendar year 1948 or fiscal year ending on \_\_\_\_\_ 1948

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than \$3,000, consisting wholly of wages shown on Form W-2, or of such wages and not more than \$100 of other wages, dividends, and interest.

Name DR. S. N. JACOBS and DOLORES I. JACOBS (PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

161 MAY 1948

HOME ADDRESS 1065 Sutter Street (PLEASE PRINT. Street and number or rural route)

San Francisco California (City, town, or post office) (Postal zone number) (State)

Occupation Doctor Social Security No. 567-05-3183

Do not write in these spaces

File Code

- 1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives (as defined in instructions) who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)

Check below whether you (or your wife) were of the age of your taxable year -

(In line 1 and b below write 1 if neither 65 nor blind; write 2 if either 65 or blind; write 3 if both 65 and blind.)

65 OR OVER BLIND

Your name Dr. S. N. Jacobs Wife's (or husband's) name Dolores I. Jacobs

Yes No Yes No Yes No

a. Number of exemptions for you 1 b. Number of her (his) exemptions 1

Name of Other Dependent Relative

Relationship

Address - If different from yours

Shella Jacobs

Daughter

1

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) 3

- 2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name

Where Employed (City and State)

Amount of Income Tax Withheld

Total Wages

Sutter Medical Service Company San Francisco, California

\$ 610 40

\$ 6,000 00

Enter totals \$ 610 40 \$ 6,000 00 680 00

- 3. Enter here the total amount of your dividends. 4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation). 5. If you received any other income, give details on page 2 and enter the total here. 6. Add income shown in items 2, 3, 4, and 5, and enter the total here.

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be in your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction or itemize your deductions, whichever is to your advantage. HUSBAND AND WIFE.—To obtain benefits of split-income provisions, husband and wife must file a joint return. If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 18, page 3. \$ 63,070 80

8. How much have you paid on your 1948 income tax?

(A) Total tax in item 2, above (attach Original Forms W-2) \$ 610 40 (B) By payments on 1948 Declaration of Estimated Tax \$ 56,500 00

9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here. This balance of tax due must be paid in full with return. \$ 26,959 80

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here. \$ 156 00

Check (x) whether you want this overpayment: Refunded to you; or Credited on your 1949 estimated tax

If you filed a return for a prior year, what was the latest year? 1947. Is your wife (or husband) making a separate return for 1948? No

To which Collector's office was it sent? 1st Dist. Calif. If "Yes," write her (or his) name

To which Collector's office did you pay amount claimed in item 8 (B), above? 1st Dist. Calif. Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Robert F. Schweier (Signature of person, other than taxpayer, preparing this return) 4-21-48 (Date)

S. Nicholas Jacobs 4/21/48 (Date)

Robert F. Schweier & Co. (Name of firm or employer, if any)

Dolores I. Jacobs 4/21/48 (Date)

To assure you both benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income.





Do not use this page if your income is wholly from salaries, wages, dividends, and interest

**Schedule A.—INCOME FROM ANNUITIES OR PENSIONS**

|   |   |
|---|---|
| 1. Cost of annuity (total amount you paid in) \$..... | 4. Total amount received this year \$.....  |
| 2. Amount received tax-free in prior years.....       | 5. Excess, if any, of line 4 over line 3.....   |
| 3. Remainder of cost (line 1 less line 2).....        | 6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4) |

89°010  
39°773  
30°080  
4°080

**Schedule B.—INCOME FROM RENTS AND ROYALTIES**

| 1. Kind and location of property   | 2. Amount of rent or royalty | 3. Depreciation or depletion (explain in Schedule F) | 4. Repairs (explain in Schedule G) | 5. Other expenses (explain in Schedule G) |
|--|------------------------------|--|------------------------------------|---|
|  | \$.....                      | \$.....  | \$.....                            | \$.....                                   |
| Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)..... \$..... |                              |  |                                    |   |

**Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.** (Farmers should obtain Form 1041F)

(1) nature of business Real Estate Subdivision Business name Hollywood Park  
 (3) business address 1068 Sutter St. San Francisco, California  
 Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

|   |                      |           |
|---|----------------------|-----------|
| 1. Total receipts.....  | \$ 508,433.05        |           |
| <b>COST OF GOODS SOLD</b>   |                      |           |
| (To be used where inventories are an income-determining factor)<br>(Enter the letters "I" or "E" or "M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower) |                      |           |
| 2. Inventory at beginning of year.....  | \$.....              |           |
| 3. Merchandise bought for sale.....   |                      |           |
| 4. Labor.....   |                      |           |
| 5. Material and supplies.....   |                      |           |
| 6. Other costs (explain in Schedule G).....   |                      |           |
| 7. Total of lines 2 to 6.....   | \$.....              |           |
| 8. Less inventory at end of year.....   |                      |           |
| 9. Net cost of goods sold (line 7 less line 8).....   | Schedule \$52,003.72 |           |
| 10. Gross profit (line 1 less line 9).....  | \$56,429.33          |           |
| <b>OTHER BUSINESS DEDUCTIONS</b>  |                      |           |
| 11. Salaries and wages not in line 4.....   | \$.....              |           |
| 12. Interest on business indebtedness.....  | 1,090.00             |           |
| 13. Taxes on business and business property.....  | 274.47               |           |
| 14. Losses (explain in Schedule G).....   |                      |           |
| 15. Bad debts arising from sales or services.....   |                      |           |
| 16. Depreciation, obsolescence, and depletion (explain in Schedule F).....  |                      |           |
| 17. Rent, repairs, and other expenses (explain in Schedule G).....  | 8,982.70             |           |
| 18. Amortization of emergency facilities (attach statement).....  |                      |           |
| 19. Net operating loss deduction (attach statement).....  |                      |           |
| 20. Total of lines 11 to 19.....  | 10,347.17            |           |
| 21. Total of lines 9 and 20.....  | 62,350.89            |           |
| 22. Net profit (or loss) (line 1 less line 21).....   |                      | 46,082.16 |

**Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.**

|   |           |
|---|-----------|
| 1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D).....                     | 58,942.41 |
| 2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)..... |           |

**Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES**

|  |
|--|
| 1. Name and address of partnership, syndicate, etc. <u>Doctors Hosp 5800</u> Amount, \$30,987.84 |
| 2. Name and address of estate or trust <u>1065 Sutter St. San Francisco</u> Amount, \$.....      |
| 3. Other sources (state nature)..... Amount, \$.....   |
| 4. Total..... 30,987.84  |
| <b>Total income from above sources (Enter as item 5, page 1)</b> ..... \$136,012.41              |

**Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C**

| 1. Kind of property (If buildings, state material of which constructed) | 2. Date acquired | 3. Cost or other basis (do not include land or other nondepreciable property) | 4. Month fully depreciated in case of end of year | 5. Depreciation allowed (or allowable) in prior years | 6. Remaining cost or other basis to be recovered | 7. Estimated life used in computing depreciation | 8. Estimated remaining life (less depreciation of year) | 9. Depreciation allowable this year |
|---|------------------|---|---|---|--|--|---|-------------------------------------|
|   |                  | \$.....   |   | \$.....   | \$.....  |  |   | \$.....                             |

**Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C**

| 1. Column or Line No. | 2. Explanation | 3. Amount | 4. Column or Line No. | 5. Explanation | 6. Amount |
|-----------------------|----------------|-----------|-----------------------|----------------|-----------|
|                       | Notary fees    | \$ 43.00  |                       | Title Fees     | \$ 679.10 |
|                       | Advertising    | 500.00    |                       |                |           |
|                       | Legal          | 1,000.00  |                       | TOTAL          | 8,982.70  |
|                       | Traveling      | 250.00    |                       |                |           |
|                       | Commissions    | 6,510.60  |                       |                |           |

| No. | Date | Description |
|-----|------|-------------|
| 1   | 1880 | ...         |
| 2   | 1881 | ...         |
| 3   | 1882 | ...         |
| 4   | 1883 | ...         |
| 5   | 1884 | ...         |
| 6   | 1885 | ...         |
| 7   | 1886 | ...         |
| 8   | 1887 | ...         |
| 9   | 1888 | ...         |
| 10  | 1889 | ...         |
| 11  | 1890 | ...         |
| 12  | 1891 | ...         |
| 13  | 1892 | ...         |
| 14  | 1893 | ...         |
| 15  | 1894 | ...         |
| 16  | 1895 | ...         |
| 17  | 1896 | ...         |
| 18  | 1897 | ...         |
| 19  | 1898 | ...         |
| 20  | 1899 | ...         |
| 21  | 1900 | ...         |
| 22  | 1901 | ...         |
| 23  | 1902 | ...         |
| 24  | 1903 | ...         |
| 25  | 1904 | ...         |
| 26  | 1905 | ...         |
| 27  | 1906 | ...         |
| 28  | 1907 | ...         |
| 29  | 1908 | ...         |
| 30  | 1909 | ...         |
| 31  | 1910 | ...         |
| 32  | 1911 | ...         |
| 33  | 1912 | ...         |
| 34  | 1913 | ...         |
| 35  | 1914 | ...         |
| 36  | 1915 | ...         |
| 37  | 1916 | ...         |
| 38  | 1917 | ...         |
| 39  | 1918 | ...         |
| 40  | 1919 | ...         |
| 41  | 1920 | ...         |
| 42  | 1921 | ...         |
| 43  | 1922 | ...         |
| 44  | 1923 | ...         |
| 45  | 1924 | ...         |
| 46  | 1925 | ...         |
| 47  | 1926 | ...         |
| 48  | 1927 | ...         |
| 49  | 1928 | ...         |
| 50  | 1929 | ...         |
| 51  | 1930 | ...         |
| 52  | 1931 | ...         |
| 53  | 1932 | ...         |
| 54  | 1933 | ...         |
| 55  | 1934 | ...         |
| 56  | 1935 | ...         |
| 57  | 1936 | ...         |
| 58  | 1937 | ...         |
| 59  | 1938 | ...         |
| 60  | 1939 | ...         |
| 61  | 1940 | ...         |
| 62  | 1941 | ...         |
| 63  | 1942 | ...         |
| 64  | 1943 | ...         |
| 65  | 1944 | ...         |
| 66  | 1945 | ...         |
| 67  | 1946 | ...         |
| 68  | 1947 | ...         |
| 69  | 1948 | ...         |
| 70  | 1949 | ...         |
| 71  | 1950 | ...         |
| 72  | 1951 | ...         |
| 73  | 1952 | ...         |
| 74  | 1953 | ...         |
| 75  | 1954 | ...         |
| 76  | 1955 | ...         |
| 77  | 1956 | ...         |
| 78  | 1957 | ...         |
| 79  | 1958 | ...         |
| 80  | 1959 | ...         |
| 81  | 1960 | ...         |
| 82  | 1961 | ...         |
| 83  | 1962 | ...         |
| 84  | 1963 | ...         |
| 85  | 1964 | ...         |
| 86  | 1965 | ...         |
| 87  | 1966 | ...         |
| 88  | 1967 | ...         |
| 89  | 1968 | ...         |
| 90  | 1969 | ...         |
| 91  | 1970 | ...         |
| 92  | 1971 | ...         |
| 93  | 1972 | ...         |
| 94  | 1973 | ...         |
| 95  | 1974 | ...         |
| 96  | 1975 | ...         |
| 97  | 1976 | ...         |
| 98  | 1977 | ...         |
| 99  | 1978 | ...         |
| 100 | 1979 | ...         |

Schedule D (File with Form 1040)

TREASURY DEPARTMENT  
Internal Revenue Service

194

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

For Calendar Year 1948 or fiscal year beginning 1948, and ending 1948

NAME AND ADDRESS DR. S. M. JACOBS and DOLORES I. JACOBS 1065 Sutter Street  
San Francisco  
California

(1) CAPITAL ASSETS

| 1. Kind of property (if necessary, attach statement of descriptive details and show date)   | 2. Date acquired<br>Mo. Day Year | 3. Date sold<br>Mo. Day Year | 4. Gross sales price (net of cost) | 5. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule) | 6. Cost or other basis (if not purchased, attach explanation) | 7. Expenses of sale and improvements (attach explanation or March 1, 1913) |
|---|----------------------------------|------------------------------|------------------------------------|---|---|--|
| <b>SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS</b>   |                                  |                              |                                    |   |   |  |
| 1. Totals   |                                  |                              | \$                                 | \$  | \$  | \$   |
| 2. Net short-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 1) |                                  |                              |                                    |   |   |  |
| 3. Enter your share of the net short-term gain or loss from partnerships and common trust funds   |                                  |                              |                                    |   |   |  |
| 4. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 2 and 3   |                                  |                              |                                    |   |   |  |

| 1. Kind of property (if necessary, attach statement of descriptive details and show date)  | 2. Date acquired<br>Mo. Day Year | 3. Date sold<br>Mo. Day Year | 4. Gross sales price (net of cost) | 5. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule) | 6. Cost or other basis (if not purchased, attach explanation) | 7. Expenses of sale and improvements (attach explanation or March 1, 1913) |
|--|----------------------------------|------------------------------|------------------------------------|---|---|--|
| <b>LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS</b>   |                                  |                              |                                    |   |   |  |
| Investment Real Estate   | 1936                             | 1/2/48                       | 9000 00                            |   | \$1984 08   | \$ 1,125 00  |
| "  | 1936                             | 1/2/48                       | 394 84                             |   | 92 67   |  |
| "  | 1936                             | 1948                         | 28000 00                           |   | 2614 90   |  |
| Gap, Stock, Hollywood Park, Inc.   | 1936                             | 1948                         | 125000 00                          |   | \$8693 36   |  |
| 1. Totals  |                                  |                              | \$162394 84                        |   | \$6585 01   | \$ 1,125 00  |
| 2. Net long-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 5) |                                  |                              |                                    |   |   | \$117,884 84   |
| 7. Enter the full amount of your share of the net long-term gain or loss from partnerships and common trust funds                                      |                                  |                              |                                    |   |   | \$117,884 84   |
| 9. Enter 50 percent of line 8. This is the amount to be taken into account in summary below  |                                  |                              |                                    |   |   | \$58,942 42  |

10. Summary of Capital Gains (use only if gains exceed losses in lines 4 and 9):

(a) Net gain for 1948 (either the sum of gains or difference between gains and losses in lines 4 and 9) \$58,942 42

(b) Capital loss carry-over, 1943-1947 inclusive \$58,942 42

(c) If line (a) exceeds line (b), enter this excess here and on line 1, Schedule D, page 2, Form 1040 \$

(d) If line (b) exceeds line (a), enter the excess here and use line (c) to determine allowable loss \$

(e) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (d); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) \$1,000 \$

(f) Enter here the amount on line (e) plus any capital loss carry-over from 1943 which was not used against line (a) or in line (c) \$

(g) Subtract line (f) from line (d) and enter the remainder here. This is your capital loss carry-over to 1949 \$

11. Summary of Capital Losses (use only if losses exceed gains in lines 4 and 9):

(a) Net loss for 1948 (either the sum of losses or difference between losses and gains in lines 4 and 9) \$

(b) Capital loss carry-over, 1943-1947 inclusive \$

(c) Total of lines (a) and (b) \$

(d) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (c); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) \$1,000 \$

(e) Enter here the amount on line (d) plus the amount of any 1943 capital loss carry-over not used in line (d) \$

(f) Subtract line (e) from line (c) and enter the remainder here. This is your capital loss carry-over to 1949 \$

(2) PROPERTY OTHER THAN CAPITAL ASSETS

| 1. Kind of property   | 2. Date acquired | 3. Gross sales price (net of cost) | 4. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule) | 5. Cost or other basis (if not purchased, attach explanation) | 6. Expenses of sale and improvements (attach explanation or March 1, 1913) |
|---|------------------|------------------------------------|---|---|--|
| 1. Totals   |                  | \$                                 | \$  | \$  | \$   |
| 2. Total net gain or loss (columns 3 plus 4 minus the sum of columns 5 and 6). Enter on line 2, Schedule D, page 2, Form 1040 |                  |                                    |   |   |  |

See other side for instructions and computation of Alternative Tax

THE HISTORY OF THE UNITED STATES

The first part of the book deals with the early years of the nation, from the time of the first settlers to the end of the Revolutionary War. It covers the period of the early Republic, the growth of the country, and the establishment of the federal government.

The second part of the book deals with the period of the Civil War and Reconstruction. It covers the years from 1861 to 1877, and the struggle for freedom and equality for all Americans.

The third part of the book deals with the period of the late 19th and early 20th centuries. It covers the years from 1877 to 1917, and the rise of industrialization and the Progressive Movement.

**ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW**  
 If husband and wife (not less than) are permitted the separate returns and separate deductions, the object must also be true.

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return. Amount

|  |   |                        |  |
|--|---|------------------------|--|
| <b>Contributions</b>   | SCHEDULE ATTACHED<br>Allowable Contributions (not in excess of 15 percent of item 6, page 1)  | \$ 365 50<br>\$ 365 50 |  |
| <b>Interest</b>  | Total Interest  | \$                     |  |
| <b>Taxes</b>   | SCHEDULE ATTACHED<br>Total Taxes  | 1,782 51<br>1,782 31   |  |
| <b>Losses from fire, storm, or other casualty, or theft.</b> | Total Allowable Losses (not compensated by insurance or otherwise)  | \$                     |  |
| <b>Medical and dental expenses.</b>                          | Net Expenses (not compensated by insurance or otherwise)<br>Enter 5 percent of item 6, page 1, and subtract from Net Expenses.<br>Allowable Medical and Dental Expenses. See Instructions for limitation. | \$                     |  |
| <b>Miscellaneous (See Instructions)</b>                      | SCHEDULE ATTACHED<br>Total Miscellaneous Deductions   | 1,652 78<br>1,652 78   |  |
| <b>TOTAL DEDUCTIONS</b>                                      |   | <b>\$ 3,800 59</b>     |  |

**TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4**

|  |               |
|--|---------------|
| 1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income.   | \$ 142,725 78 |
| 2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions, if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$1,000 or 10 percent of line 1, above, whichever is the lesser, or \$500 if this is the separate return of a married person). | 3,800 59      |
| 3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income.  | \$ 138,925 19 |
| 4. Multiply \$600 by total number of exemptions claimed in item 1, page 1. Enter total here.   | 1,800 00      |
| 5. Subtract line 4 from line 3. Enter difference here.   | \$ 137,125 19 |
| Lines 6, 7, and 8 should be filed in ONLY by a single person or a married person making a separate return  |               |
| 6. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 5 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here.  | \$            |
| 7. If line 6 is (a) not over \$400, enter 17% of amount on line 6.   | }             |
| (b) over \$400 but not over \$100,000, enter \$68 plus 12% of the excess over \$400.   |               |
| (c) over \$100,000, enter \$12,023 plus 9.75% of the excess over \$100,000.  |               |
| 8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax.  | \$            |
| Lines 9 to 13 should be filed in ONLY if this is a joint return of husband and wife  |               |
| 9. Enter here one-half of amount on line 3, above.   | \$ 68,562 60  |
| 10. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 9 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here.   | \$ 40,998 83  |
| 11. If line 10 is (a) not over \$400, enter 17% of amount in line 10.  | }             |
| (b) over \$400 but not over \$100,000, enter \$68 plus 12% of the excess over \$400.   |               |
| (c) over \$100,000, enter \$12,023 plus 9.75% of the excess over \$100,000.  |               |
| 12. Subtract line 11 from line 10. Enter the difference here.  | \$ 36,058 97  |
| 13. Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax.   | \$ 72,117 94  |
| 14. If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D.  | \$ 63,070 20  |
| If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable  |               |
| 15. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116).  | \$            |
| 16. Enter here any income tax paid at source on tax-free covenant bond interest.   | \$            |
| 17. Add the figures on lines 15 and 16 and enter the total here.   | \$            |
| 18. Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 7, page 1. This is your tax.   | \$            |

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be clearly documented and supported by appropriate evidence. This ensures transparency and accountability in the financial process.

In the second section, the author outlines the various methods used to collect and analyze data. These methods include direct observation, interviews, and the use of specialized software tools. Each method is described in detail, highlighting its strengths and potential limitations.

The third section focuses on the results of the study. It presents a comprehensive overview of the findings, which show a significant correlation between the variables being studied. The data indicates that the proposed model is effective in predicting the outcomes of interest.

Finally, the document concludes with a series of recommendations for future research and practical applications. It suggests that further studies should explore the long-term effects of the interventions and consider the impact of external factors. The author also provides guidance on how the findings can be applied in real-world settings to improve efficiency and effectiveness.

(Testimony of Robert L. Schwerin.)

(Copy)

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building  
San Francisco (2), Calif.

Office of the Collector  
First District of  
California

In replying refer to  
BR 708

March 15th, 1949.

S. Nicholas & Dolores I. Jacobs,  
Sutter St., between Hyde & Larkin,  
San Francisco, Calif.

Dear Sir and Madam:

Receipt is acknowledged of your letter of recent date requesting for the reasons therein given, an extension of time within which to file your return of income for the calendar year ended December 31st, 1948.

You are hereby granted an extension of time to April 15th, 1949, within which to file Form 1040 and make payment of the tax shown thereon to be due.

In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one

(Testimony of Robert L. Schwerin.)

per cent a month from the due date up to and including the date of payment.

This letter or a copy thereof must be attached to the return when filed, as authority for the extension of time herein granted.

Very truly yours,

GEO. E. SCHOENEMAN,  
Commissioner;

By JAMES J. SMYTH,  
Collector.

---

Dr. S. N. Jacobs and Dolores I. Jacobs  
1065 Sutter Street  
San Francisco, California

Supporting Schedules for 1948 Income Tax Return

Contributions:

|  |             |
|--|-------------|
| Jewish Natl. Welfare Federation, Inc. .... | \$ 25.00    |
| American Natl. Red Cross .....             | 35.00       |
| S. F. Chest .....                          | 20.00       |
| Hoyt R. Wood Memorial Fund .....           | 25.00       |
| Guide Dogs for the Blind .....             | 10.00       |
| Sammy Kaye—Hospital Entertainment .....    | 10.00       |
| Father Flanagan's Boys' Town .....         | 2.50        |
| S. F. Tuberculosis Assn. ....              | 2.00        |
| S. F. Guild Crippled Children .....        | 1.00        |
| S. F. Opera Guild .....                    | 10.00       |
|  | <hr/>       |
|  | \$ 365.00   |
|  | <hr/> <hr/> |



(Testimony of Robert L. Schwerin.)

Taxes:

|                                       |    |             |
|---------------------------------------|----|-------------|
| California State Income Taxes .....   | \$ | 1,040.52    |
| Marin County—Real Property .....      |    | 263.40      |
| Ross City—Real Property .....         |    | 87.84       |
| State & City Sales Tax .....          |    | 352.12      |
| Auto License .....                    |    | 30.00       |
| San Francisco—Personal Property ..... |    | 8.43        |
|                                       |    | <hr/>       |
|                                       | \$ | 1,782.31    |
|                                       |    | <hr/> <hr/> |

Other Deductions:

|  |    |             |
|--|----|-------------|
| Unemployment Ins. ....                       | \$ | 30.00       |
| Expenses in connection with pro-<br>fession: |    |             |
| S. F. Medical Assn. ....                     |    | 215.00      |
| American College of Surgeons .....           |    | 25.00       |
| Commonwealth Club .....                      |    | 12.00       |
| Subscriptions .....                          |    | 76.00       |
| Auto Expenses:                               |    |             |
| Upkeep .....                                 | \$ | 660.00      |
| Insurance .....                              |    | 129.63      |
| Depreciation .....                           |    | 380.04      |
|  |    | <hr/>       |
| 1/2 Home Telephone .....                     |    | 125.11      |
|  |    | <hr/>       |
| Total Other Deductions .....                 | \$ | 1,652.78    |
|  |    | <hr/> <hr/> |

(Testimony of Robert L. Schwerin.)

Dr. S. N. Jacobs  
 Dolores I. Jacobs  
 San Francisco, California

## Income

## Schedule C :

## Total Receipts:

|                       |              |
|-----------------------|--------------|
| Sales—Cash .....      | \$ 29,626.98 |
| Installment .....     | 75,614.99    |
| Interest earned ..... | 3,191.08     |
|                       | <hr/>        |
|                       | \$108,433.05 |
|                       | <hr/> <hr/>  |

## Item 9—Cost of Sales:

|                   |              |
|-------------------|--------------|
| Sales—Cash .....  | \$ 14,009.74 |
| Installment ..... | 37,993.98    |
|                   | <hr/>        |
|                   | \$ 52,003.72 |
|                   | <hr/> <hr/>  |

COMPUTATION OF ALTERNATIVE TAX

Use only if you had a net long-term capital gain or an excess of net long-term capital gain over net short-term capital loss, and line 5 or 9, page 3, Form 1040 exceeds \$22,000.

|    |  |    |
|----|--|----|
| 1  | Enter the income from either line 5 (if separate return) or line 9 (if joint return) page 3, Form 1040   | \$ |
| 2  | If separate return, enter net long-term capital gain or excess of net long-term capital gain over net short-term capital loss (the gain in line 9, Schedule D, less the sum of any losses in lines 4 and 10) (b); if joint return, enter one-half of such amount | \$ |
| 3  | Balance (line 1 less line 2)   | \$ |
| 4  | Enter tentative tax on amount on line 3. See Form 1040 Instructions  | \$ |
| 5  | If line 4 is: (a) Not over \$400, enter 17% of amount on line 4<br>(b) Over \$400 but not in excess of \$100,000, enter \$68 plus 12% of the excess over \$400<br>(c) Over \$100,000, enter \$12,020 plus 9 7/8% of the excess over \$100,000                    | \$ |
| 6  | Balance (line 4 less line 5). This is the partial tax for a separate return  | \$ |
| 7  | If you are filing a joint return, multiply amount on line 6 by two   | \$ |
| 8  | If separate return, enter 50% of amount on line 2; if joint return, enter full amount of line 2  | \$ |
| 9  | Enter amount from either line 6 or 7, whichever is applicable  | \$ |
| 10 | Alternative tax (line 8 plus line 9)   | \$ |
| 11 | Enter total normal tax and surtax from page 3, Form 1040 (either line 8 or line 13, whichever is applicable)   | \$ |
| 12 | Tax liability (line 10 or 11, whichever is smaller. Enter here and also in item 14, page 3, Form 1040)   | \$ |

INSTRUCTIONS—(References are to the Internal Revenue Code)

GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS AND OTHER PROPERTY.—Report details in schedule on other side.

"Capital assets" defined.—The term "capital assets" means—All property held by the taxpayer (whether or not connected with his trade or business) but does NOT include—

- (a) stock in trade or other property of a kind properly includable in his inventory if on hand at the close of the taxable year,
- (b) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,
- (c) property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 23 (1),
- (d) real property used in the trade or business of the taxpayer,
- (e) an obligation of the U. S. or any of its possessions or of a State or Territory, or of any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue.

If the total of the distribution to which an employee is entitled under an employer's pension, bonus, or profit-sharing trust plan meeting the requirements of section 165 (a) is received by the employee in one taxable year, on account of the employee's separation from the service, the aggregate amount of such distribution, to the extent it exceeds the amounts contributed by the employee, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months.

A capital gain dividend, as defined in section 162 (relating to tax on regulated investment companies), shall be treated by the shareholder as gains from the sale or exchange of capital assets held for more than 6 months.

Subsections (j) and (k) of section 117, in effect, provide that all transactions covered by these subsections shall, in the event of a net gain, be taken into account at 50 percent as in the case of long-term capital gain but, in the event of a net loss, shall be taken into account at 100 percent as in the case of property other than capital assets. Thus, in the event of a net gain, all these transactions should be entered in the "long-term capital gains and losses" portion of Schedule D on the other side. In the event of a net loss, all these transactions should be entered in the "property other than capital assets" portion of Schedule D, or in such other schedules on Form 1040 as are applicable.

Even though the law excludes depreciable and real properties used in the trade or business from the definition of "capital assets" under section 117 (a), subsection 117 (j) provides that gains and losses from sales and exchanges of such properties plus gains and losses from compulsory or involuntary conversions, shall be considered as gains and losses from the sale or exchange of capital assets in the event the gains exceed the losses from all such transactions. In order to qualify under subsection (j), the depreciable and real properties used in your trade or business must (a) have been held by you for more than 6 months, and (b) not held primarily for sale to customers in the ordinary course of your trade or business, nor properly includable in your inventory if on hand at the close of the taxable year. Section 117 (k) provides that in order to elect the special treatment under section 117 (j) for gains or losses from the cutting of timber, you must (a) own the timber which is cut, or (b) have a contract right to cut the timber on the property of another, or (c) upon your disposal of timber under contract, retain an economic interest in such timber.

Kind of property listed.—State following facts: (a) for real estate (including owner-occupied residences), location and description of land and improvements, (b) for bonds or other evidences of indebtedness, name of issuing corporation, particular issue, denomination, and amount, and (c) for stocks, name of corporation, class of stock, number of shares, and capital changes affecting basis (including nontaxable distributions).

Basis.—In determining gain or loss in case of property acquired after February 28, 1913, use cost, except as otherwise provided in section 113. The basis of the property acquired by gift after December 31, 1920, is the cost or other basis to the donor in the event of gain, but, in the event of loss, it is the lower of either such donor's basis or market value of property on date of gift. The basis of property acquired by inheritance is the fair market value

of the property at time of acquisition which generally is the date of death. In the case of sales and exchanges of owner-occupied residences, automobiles and other such nontaxable producing properties, the basis for determining gain is the original cost plus the cost of permanent improvements thereon. No losses are recognized for income tax purposes on the sale and exchange of such nontaxable-producing properties. In determining GAIN in a property acquired before March 1, 1913, use the cost or the fair market value as of March 1, 1913, adjusted as provided in section 113 (b), whichever is greater, but in determining LOSS use cost so adjusted.

Losses on securities becoming worthless.—If (a) shares of a corporation become worthless during the year or (b) corporate securities with interest coupons or in registered form become worthless during the year, and capital assets, the loss therefrom shall be considered as from the sale or exchange of capital assets as of the last day of such taxable year.

Nonbusiness debts.—If a debt, such as a personal loan but not a debt evidenced by a corporate security with interest coupons or in registered form and (b) a debt the loss from the worthlessness of which is incurred in the trade or business, becomes totally worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months. Enter such loss in column 6 (describe in column 1) of schedule short-term capital gains and losses on other side.

Classification of capital gains and losses.—The phrase "short-term" applies to gains and losses from the sale or exchange of capital assets for 6 months or less, the phrase "long-term" to capital assets held for more than 6 months.

"Wash sales" losses.—Losses from the sale or other disposition of stocks or securities are not deductible (unless sustained in connection with the taxpayer's trade or business), if, within 30 days before or after the sale or other disposition, the taxpayer has acquired (by purchase or by exchange upon which the entire amount of gain or loss was recognized in law), or has entered into a contract or option to acquire, substantially identical stock or securities.

Losses in transactions between certain persons.—No deduction allowable for losses from sales or exchanges of property directly or indirectly between (a) members of a family, (b) a corporation and an individual owning more than 50 percent of its stock (liquidations excepted), (c) a grantor or fiduciary of any trust, or (d) a fiduciary and a beneficiary of the same trust.

Non deductible losses.—Losses from the sale or exchange of property are not deductible unless they are incurred in trade or business or in transactions entered into for profit.

LIMITATION ON ALLOWABLE CAPITAL LOSSES.—Allowable losses from current year sales or exchanges of capital assets shall be allowed only to the extent of (1) current year gains from such sales or exchanges plus (2) the smaller of either the net income of the current (or adjusted gross income if tax table is used) computed without regard to capital gains or losses, or \$3,000. The excess of such allowable losses over the sum of items (1) plus (2) above is called "capital loss carry-over" and may be carried forward and used against any such gain and income of five succeeding years. However, the capital loss carry-over of each year should be kept separate, since the law limits the use of such carry-over to the five succeeding years. Therefore, in offsetting your capital gain income of 1948 by prior year loss carry-overs, use any capital loss carry-overs remaining from 1943 before using any such carry-over from 1944 or subsequent years. Any 1943 carry-over which cannot be used in 1948 must be excluded in determining your total loss carry-over to 1943 and subsequent years.

ALTERNATIVE TAX.—If the net long-term capital gain exceeds net short-term capital loss, or in the case of only a long-term capital gain (taxpayers (a) filing separate returns with surtax net income exceeding \$22,000 or (b) filing joint returns with surtax net income exceeding \$44,000) shall compute the alternative tax (see computation of alternative tax above). The alternative tax, if less than the normal tax and surtax computed on page 3 of Form 1040, shall be the tax liability.

The following is a list of the names of the members of the  
 Board of Trustees of the University of Chicago, as of  
 the date of the meeting of the Board on the 15th day  
 of June, 1900.

| Name                | Residence            | Term Expires |
|---------------------|----------------------|--------------|
| John D. Rockefeller | New York City, N. Y. | 1901         |
| James H. Wood       | Chicago, Ill.        | 1902         |
| William W. Wood     | Chicago, Ill.        | 1903         |
| John C. Bennett     | Chicago, Ill.        | 1904         |
| James H. Wood       | Chicago, Ill.        | 1905         |
| William W. Wood     | Chicago, Ill.        | 1906         |
| John C. Bennett     | Chicago, Ill.        | 1907         |
| James H. Wood       | Chicago, Ill.        | 1908         |
| William W. Wood     | Chicago, Ill.        | 1909         |
| John C. Bennett     | Chicago, Ill.        | 1910         |
| James H. Wood       | Chicago, Ill.        | 1911         |
| William W. Wood     | Chicago, Ill.        | 1912         |
| John C. Bennett     | Chicago, Ill.        | 1913         |
| James H. Wood       | Chicago, Ill.        | 1914         |
| William W. Wood     | Chicago, Ill.        | 1915         |
| John C. Bennett     | Chicago, Ill.        | 1916         |
| James H. Wood       | Chicago, Ill.        | 1917         |
| William W. Wood     | Chicago, Ill.        | 1918         |
| John C. Bennett     | Chicago, Ill.        | 1919         |
| James H. Wood       | Chicago, Ill.        | 1920         |
| William W. Wood     | Chicago, Ill.        | 1921         |
| John C. Bennett     | Chicago, Ill.        | 1922         |
| James H. Wood       | Chicago, Ill.        | 1923         |
| William W. Wood     | Chicago, Ill.        | 1924         |
| John C. Bennett     | Chicago, Ill.        | 1925         |
| James H. Wood       | Chicago, Ill.        | 1926         |
| William W. Wood     | Chicago, Ill.        | 1927         |
| John C. Bennett     | Chicago, Ill.        | 1928         |
| James H. Wood       | Chicago, Ill.        | 1929         |
| William W. Wood     | Chicago, Ill.        | 1930         |
| John C. Bennett     | Chicago, Ill.        | 1931         |
| James H. Wood       | Chicago, Ill.        | 1932         |
| William W. Wood     | Chicago, Ill.        | 1933         |
| John C. Bennett     | Chicago, Ill.        | 1934         |
| James H. Wood       | Chicago, Ill.        | 1935         |
| William W. Wood     | Chicago, Ill.        | 1936         |
| John C. Bennett     | Chicago, Ill.        | 1937         |
| James H. Wood       | Chicago, Ill.        | 1938         |
| William W. Wood     | Chicago, Ill.        | 1939         |
| John C. Bennett     | Chicago, Ill.        | 1940         |
| James H. Wood       | Chicago, Ill.        | 1941         |
| William W. Wood     | Chicago, Ill.        | 1942         |
| John C. Bennett     | Chicago, Ill.        | 1943         |
| James H. Wood       | Chicago, Ill.        | 1944         |
| William W. Wood     | Chicago, Ill.        | 1945         |
| John C. Bennett     | Chicago, Ill.        | 1946         |
| James H. Wood       | Chicago, Ill.        | 1947         |
| William W. Wood     | Chicago, Ill.        | 1948         |
| John C. Bennett     | Chicago, Ill.        | 1949         |
| James H. Wood       | Chicago, Ill.        | 1950         |
| William W. Wood     | Chicago, Ill.        | 1951         |
| John C. Bennett     | Chicago, Ill.        | 1952         |
| James H. Wood       | Chicago, Ill.        | 1953         |
| William W. Wood     | Chicago, Ill.        | 1954         |
| John C. Bennett     | Chicago, Ill.        | 1955         |
| James H. Wood       | Chicago, Ill.        | 1956         |
| William W. Wood     | Chicago, Ill.        | 1957         |
| John C. Bennett     | Chicago, Ill.        | 1958         |
| James H. Wood       | Chicago, Ill.        | 1959         |
| William W. Wood     | Chicago, Ill.        | 1960         |
| John C. Bennett     | Chicago, Ill.        | 1961         |
| James H. Wood       | Chicago, Ill.        | 1962         |
| William W. Wood     | Chicago, Ill.        | 1963         |
| John C. Bennett     | Chicago, Ill.        | 1964         |
| James H. Wood       | Chicago, Ill.        | 1965         |
| William W. Wood     | Chicago, Ill.        | 1966         |
| John C. Bennett     | Chicago, Ill.        | 1967         |
| James H. Wood       | Chicago, Ill.        | 1968         |
| William W. Wood     | Chicago, Ill.        | 1969         |
| John C. Bennett     | Chicago, Ill.        | 1970         |
| James H. Wood       | Chicago, Ill.        | 1971         |
| William W. Wood     | Chicago, Ill.        | 1972         |
| John C. Bennett     | Chicago, Ill.        | 1973         |
| James H. Wood       | Chicago, Ill.        | 1974         |
| William W. Wood     | Chicago, Ill.        | 1975         |
| John C. Bennett     | Chicago, Ill.        | 1976         |
| James H. Wood       | Chicago, Ill.        | 1977         |
| William W. Wood     | Chicago, Ill.        | 1978         |
| John C. Bennett     | Chicago, Ill.        | 1979         |
| James H. Wood       | Chicago, Ill.        | 1980         |
| William W. Wood     | Chicago, Ill.        | 1981         |
| John C. Bennett     | Chicago, Ill.        | 1982         |
| James H. Wood       | Chicago, Ill.        | 1983         |
| William W. Wood     | Chicago, Ill.        | 1984         |
| John C. Bennett     | Chicago, Ill.        | 1985         |
| James H. Wood       | Chicago, Ill.        | 1986         |
| William W. Wood     | Chicago, Ill.        | 1987         |
| John C. Bennett     | Chicago, Ill.        | 1988         |
| James H. Wood       | Chicago, Ill.        | 1989         |
| William W. Wood     | Chicago, Ill.        | 1990         |
| John C. Bennett     | Chicago, Ill.        | 1991         |
| James H. Wood       | Chicago, Ill.        | 1992         |
| William W. Wood     | Chicago, Ill.        | 1993         |
| John C. Bennett     | Chicago, Ill.        | 1994         |
| James H. Wood       | Chicago, Ill.        | 1995         |
| William W. Wood     | Chicago, Ill.        | 1996         |
| John C. Bennett     | Chicago, Ill.        | 1997         |
| James H. Wood       | Chicago, Ill.        | 1998         |
| William W. Wood     | Chicago, Ill.        | 1999         |
| John C. Bennett     | Chicago, Ill.        | 2000         |

(Testimony of Robert L. Schwerin.)

Mr. Nyquist: I might say, your Honor, attached to this copy is a copy of all the attachments that were part of the original return, that is, the withholding statement.

The Court: And nothing else?

Mr. Nyquist: Nothing else, your Honor.

Mr. Layman: I accept Counsel's statement, and have no objection.

Mr. Nyquist: Your Honor, I see no point in cross-examining the witness on his computations, because I imagine if there were a recomputation in the case it would be done under Rule 50, anyway.

The Court: That's right.

Mr. Nyquist: So I have no further questions of this witness.

The Court: You are excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Layman: If the Court please, if the Court feels, in the light of the observation that was made by the Court, that Dr. Jacobs should come, I am prepared—

The Court: The Court has no feeling in the matter whatsoever. It is entirely up to your election whether he is present or whether he is not. You may call him as a witness or not. Any other witness the same.

Mr. Carey: We submit the petitioners' case [50] at this time, your Honor.

The Court: The petitioners rest?

Mr. Carey: Yes, sir.

Mr. Nyquist: Your Honor, at this time I offer as Respondent's Exhibit, next in order, certified copies of a certificate stating that Hollywood Subdivision, Inc., a California corporation, has elected to wind up and dissolve, which is dated April 8, 1948, and filed with the Secretary of State, for the State of California, April 8, 1948, and a certificate of winding-up and dissolution of Hollywood Subdivision, Inc., which is dated April 8, 1948, and filed with the Secretary of State, for the State of California on May 8, 1948.

I will offer these two as one exhibit, because there is simply one certification attached to them.

The Court: They will be marked as Exhibit C.

(Thereupon, the documents above referred to were received in evidence and marked Respondent's Exhibit C.)

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## RESPONDENT'S EXHIBIT C

State of California  
Office of the Secretary of State

I, Frank M. Jordan, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the Record on file in my office, of which it purports to be a copy, and that the same is full, true and correct.

In Witness Whereof, I hereunto set my hand and affix the Great Seal of the State of California, at Sacramento, this 19th day of March, 1953.

[Seal]      /s/ FRANK M. JORDAN,  
Secretary of State;

By /s/ [Indistinguishable.]  
Assistant Secretary of State.

Certificate Stating That Hollywood Subdivision, Inc., a California Corporation, Has Elected to Wind Up and Dissolve.

Frank MacBride, Jr., and Dorothy M. Baker, being respectively the President and Secretary of Hollywood Subdivision, Inc., a corporation organized and existing under and by virtue of the laws of the State of California, do hereby certify and state that said Hollywood Subdivision, Inc., has elected to wind up and dissolve and that such election was made by the written consent of the holders of all of the issued and outstanding shares of said corporation.

In Witness Whereof the undersigned have executed this certificate this 8th day of April, 1948.

/s/ FRANK MacBRIDE, JR.,  
President of Hollywood  
Subdivision, Inc.;

/s/ DOROTHY M. BAKER,  
Secretary of Hollywood  
Subdivision, Inc.

State of California,  
County of Sacramento—ss.

On this 8th day of April, in the year of our Lord One Thousand Nine Hundred and Forty-Eight, before me, Thomas J. MacBride, a Notary Public in and for said County of Sacramento, State of California, residing therein, duly commissioned and sworn, personally appeared Frank MacBride, Jr., President of Hollywood Subdivision, Inc., and Dorothy M. Baker, Secretary of Hollywood Subdivision, Inc., known to me to be the persons described in and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal at my office in said County of Sacramento, the day and year in this certificate first above written.

[Seal]     /s/ THOMAS J. MacBRIDE,  
Notary Public in and for Said County of Sacramento, State of California.

My Commission expires April 16th, 1950.



Certificate of Winding Up and Dissolution  
of Hollywood Subdivision, Inc.

The undersigned, constituting a majority of the directors of Hollywood Subdivision, Inc., a California corporation, hereby certify:

That Hollywood Subdivision, Inc., has been completely wound up; that all its known debts and liabilities have been paid; that all its known assets have been distributed; that it had three directors and that the undersigned are all thereof.

In Witness Whereof, we have signed this affidavit this 8th day of April, 1948.

/s/ FRANK MacBRIDE, JR.,

/s/ THOMAS J. MacBRIDE,

/s/ DOROTHY M. BAKER,

Directors of Hollywood Subdivision, Inc., a Dissolved California Corporation.

State of California,  
County of Sacramento—ss.

On this 8th day of April, 1948, before me, Kenneth G. McGilvray, a Notary Public in and for the County of Sacramento, State of California, residing therein, duly commissioned and sworn, personally appeared Frank MacBride, Jr., Thomas J. MacBride and Dorothy M. Baker, known to me to be the

persons whose names are subscribed to the above instrument and acknowledged that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office in the County of Sacramento, State of California, the day and year in this certificate first above written.

[Seal] /s/ KENNETH G. McGILVRAY,  
Notary Public in and for the County of Sacramento,  
State of California.

My Commission Expires: 11/29/49.

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Mr. Nyquist: The respondent rests, your Honor.

The Court: How much time do you wish for filing briefs in this case? Will 45 days be enough for the petitioners?

Mr. Carey: That will be fine, your Honor.

The Court: 45 days will be allowed for petitioners [51] for opening brief, 45 days thereafter for the respondent for his brief, and 20 days following that for the petitioners' reply.

Mr. Carey: Would the Court desire oral argument at the time the briefs are completed, or do you want oral argument at the present time?

The Court: We have no desire for oral argument, unless counsel feels compelled to make such.

Mr. Carey: No, your Honor.

The Court: The case will stand submitted on the record made.

Is there anything further to come to our attention this morning?

The Clerk: No, sir.

The Court: We will recess until Monday morning at 10:00 o'clock.

(Whereupon, at 11:30 o'clock a.m. Friday, March 27, 1953, the court was recessed until Monday, March 30, 1953, at 10:00 o'clock a.m.)

Filed April 16, 1953, T.C.U.S. [52]

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[Title of Tax Court and Cause.]

### FINDINGS OF FACT AND OPINION

Held: The gain realized by petitioners in 1948 was ordinary income derived from the sale of real estate held for sale to customers in the ordinary course of petitioners' real estate business. Held, further, petitioners are not entitled to report such gain on the installment basis, having made the election in their 1948 tax return to report the gain upon a basis other than the installment basis and there being no evidence that such method does not clearly reflect income.

EVERETT S. LAYMAN, ESQ., and  
KENNETH S. CAREY, ESQ.,

For the Petitioners.

C. W. NYQUIST, ESQ.,  
For the Respondent.

Respondent determined a deficiency in income tax of the petitioners for the year 1948 in the amount of \$42,109.63. Several of the adjustments made by respondent have been conceded by petitioners. One issue raised by the pleadings, respecting respondent's disallowance of a claimed deduction for attorneys' fees in the amount of \$1,000, has been resolved by agreement of the parties.

The questions remaining for our consideration are:

1. Whether the gain on a certain sale made by petitioners in 1948 was ordinary income from the sale of property held for sale to customers in the ordinary course of petitioners' real estate business or was a capital gain on a sale of corporate stock.

2. Whether, if the gain was ordinary income, the petitioners are entitled to report it on the installment basis.

#### Findings of Fact

Those facts which have been stipulated are so found, and, by this reference, made a part hereof.

The petitioners are S. Nicholas Jacobs and Dolores I. Jacobs, husband and wife, who reside in San Francisco, California. They filed their joint income tax return for 1948 with the Collector of Internal Revenue for the First District of California.

Prior to the taxable year involved, S. Nicholas Jacobs (hereinafter referred to as petitioner)

acquired certain real property in Sacramento County, California. A portion of such property had been subdivided and sold prior to August, 1946. Part of the property was included in the map of Hollywood Park Unit No. 2, hereinafter sometimes called Subdivision No. 2, which map was filed for record in the Office of the Recorder of Sacramento County on July 29, 1946. Another part of the property was included in the map of Hollywood Park Unit No. 3, hereinafter sometimes called Subdivision No. 3, which map was filed for record in the Office of the Recorder on November 25, 1947.

In 1948, and for several years prior thereto, petitioner had individually engaged in the subdivision and sale of his Sacramento property. During the summer of 1946, petitioner had been advised by his counsel that, because of the undesirability of his having complete personal liability in connection with street contracts and sales of land, he should not engage in any further activity in his individual capacity with relation to subdividing and selling his Sacramento real estate.

On August 28, 1946, Hollywood Subdivision, Inc. (hereinafter referred to as Subdivision), was incorporated under the laws of the State of California. Petitioner's attorney and two of the attorney's employees were the incorporators. No capital stock was issued at that time. A permit to issue such stock in exchange for Subdivision No. 2 was filed with the Commissioner of Corporations of the State of California. This plan was subsequently aban-

done when petitioner became ill, was operated on, and went to Nevada to recuperate.

Prior to the incorporation of Subdivision, petitioner and his attorney did not discuss or consider the problem of whether or not petitioner would ultimately sell the stock thereof. In addition to the undesirability of petitioner's having complete personal liability in connection with street contracts or sales of land, petitioner and his attorney looked into the question of income taxes, the effect thereof on petitioner or the corporation or both jointly if instead of petitioner engaging in the business personally, he had his corporation engage in the business of selling lots.

Early in 1948, one Frank McBride, Jr., who was in the real estate business in Sacramento, and who was the agent who had successfully sold the lots in Subdivision No. 2 that had been sold, approached petitioner with regard to Subdivision No. 3. MacBride wished the right to sell the lots therein. He also offered to buy the lots. He was told by petitioner's attorney, in the presence of petitioner, that he could not buy the land; that the land was not for sale; and that he would not be permitted to be a real estate broker in the sale thereof. MacBride was informed by petitioner's attorney, in the presence of petitioner, that he might obtain control of the land by purchasing the stock of a corporation owning the land. The attorney further told MacBride that the stock of the corporation was not for sale at that time; that, if, after the stock was issued in exchange for the land

he was still interested in purchasing the stock, negotiations to that end could be instituted; but that, in the meantime, petitioner could abandon his plan to transfer the land to the corporation in exchange for the stock, or MacBride could change his plan to submit an offer for the stock; and that the entire matter would have to be held in abeyance until the attorney's return from Washington. At this time, there was no effective permit from the California Commissioner of Corporations to issue the stock. Action to that end was instituted while the attorney was away but the application was not filed until after his return early in March, 1948.

On March 8, 1948, Hollywood Terrace, Inc. (hereinafter referred to as Terrace), was incorporated under the laws of the State of California at the instance of Frank MacBride, Jr. Frank MacBride, Jr.; Thomas J. MacBride and Dorothy M. Baker were the incorporators. At all times material to this proceeding, Frank MacBride, Jr., owned 98 per cent of all its issued and outstanding common capital stock. Thomas J. MacBride owned one per cent thereof and Dorothy M. Baker owned one per cent thereof. At no time did petitioner or his wife have any interest, direct or indirect, in the stock of Terrace. That corporation was at all times dominated and controlled by Frank MacBride, Jr.

The permit to issue stock was granted to Subdivision by the Commissioner of Corporations of the State of California on March 29, 1948. On or about April 1, 1948, petitioner exchanged Subdivision No. 3 for 1,750 shares of \$100 par value stock

of Subdivision. Prior to the issuance of any of the stock of Subdivision, MacBride made an appraisal of the real estate in controversy. He valued it at \$175,000.

On or about April 5, 1948, petitioner's attorney arranged for the "sale" of petitioner's stock to Terrace. At that time, petitioner received a promissory note in the sum of \$175,000 from Terrace, which corporation had little or no assets other than the stock of Subdivision, thereby acquired. Such stock was pledged by an instrument of pledge to petitioner. It was reissued in the name of Terrace, and then was reissued in the name of petitioner as pledgee. At that point in the transaction, petitioner was the owner of a promissory note having a fair market value when received in 1948 of \$125,000, which note was secured by 1,750 shares of the common stock of Subdivision. Subdivision continued to be the owner of the real estate, and Terrace was the owner of the 1,750 shares, subject to the pledge to secure the promissory note. Thereafter and on April 6, 1948, MacBride, in writing, requested permission to alter the plans concerning the subdivision and to dissolve Subdivision. Such permission was granted by petitioner and Subdivision was dissolved on or about April 8, 1948, by one or more or all of Frank MacBride, Jr.; Thomas J. MacBride, and Dorothy M. Baker. At this point, petitioner was the holder of the promissory note in the sum of \$175,000, which note was secured by a deed of trust on Subdivision No. 3.

Prior to April 5, 1948, Subdivision never had a



bank account, it never paid any salaries to any employees, it never had any books of account, it never bought or sold any real estate or any personal property, and it had not entered into any business transactions of any kind.

The promissory note of Terrace, held by petitioner, was liquidated in the years 1948 through 1951, as follows:

| Year       | Payment     |
|------------|-------------|
| 1948 ..... | \$28,364.57 |
| 1949 ..... | 74,762.98   |
| 1950 ..... | 12,225.77   |
| 1951 ..... | 7,201.41    |

On the Federal income tax return filed by petitioner and his wife for the year 1948, they did not elect to report on the installment basis their gain on the sale of the property which they sold for \$175,000 in such year.

In addition, we make the following ultimate findings of fact:

The conveyance of Subdivision No. 3 to Hollywood Subdivision, Inc.; the issuance of the stock of Hollywood Subdivision, Inc., to petitioner; the transfer of such stock by petitioner to Hollywood Terrace, Inc., and the receipt by petitioner of a note in the sum of \$175,000 were component parts of a single transaction, by which petitioner effected a sale of land in the ordinary course of business.

The corporation known as Hollywood Subdivision, Inc., served no business purpose and per-

formed no business function other than to act as a conduit to transfer the title to Subdivision No. 3 from petitioner to a purchaser of such real estate.

### Opinion

Van Fossan, Judge:

Respondent has determined, and here maintains, that the gain derived by petitioner from his transaction with Terrace is ordinary income from the sale of land held for sale to customers in the ordinary course of his real estate business. Petitioner contends that such gain is a capital gain derived from a sale of petitioner's stock in Subdivision. The pertinent portion of the Code is Section 117 (a) (1).<sup>1</sup>

Whether the transaction in controversy was a sale of petitioner's stock in Subdivision as it purported to be or was in substance a sale by petitioner of his Sacramento real estate in the ordinary course of business is entirely a question of fact. Our ultimate finding, set out above, is dispositive thereof and no useful purpose is to be served by prolonging

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<sup>1</sup>Sec. 117. Capital Gains and Losses.

(a) Definitions.—As used in this chapter—

(1) Capital Assets.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, \* \* \*

this opinion with a detailed analysis of the evidence and the factors leading us so to conclude. Suffice it to say that, in reaching such conclusion, we have given full consideration to the entire picture, all the pertinent evidence and the inferences properly to be drawn therefrom. Although petitioner went through all of the formal steps of activating a dormant corporation, transferring the property in question thereto in exchange solely for its stock and then "selling" such stock to a corporation dominated and controlled by one, who, it is admitted, was anxious to acquire the land by whatever means, it seems clear to us that it was of no avail taxwise. All of the separate transfers were but component steps of a single transaction, namely, the sale and transfer of petitioner's Sacramento property to MacBride or to a corporation controlled by him. "\* \* \* A given result at the end of a straight path is not made a different result because reached by following a devious path. \* \* \*" *Minnesota Tea Co. v. Helvering*, 302 U.S. 609.

Moreover, even if there was no enforceable agreement or binding commitment on the part of petitioner to sell his stock in Subdivision prior to its issuance to him, it is properly to be inferred from the evidence at hand that there did exist an understanding to such effect, albeit implied. MacBride's letter to petitioner, written as it was on the day following the so-called sale of petitioner's stock to Terrace, and in which he requested permission to

alter the plans and to dissolve the corporate titleholder of the land involved, appears to be but another step in completing the formal picture.

Consequently, we are constrained to disregard the corporate entity of Subdivision, and hold that it served only as a conduit through which petitioner was enabled to effect a sale of property in the ordinary course of his real estate business; that petitioner's various transactions with and through Subdivision were all parts of a single transaction, and that the gain derived therefrom constitutes and is taxable as ordinary income. Cf. *Commissioner v. Court Holding Co.*, 324 U.S. 331, with *United States v. Cumberland Public Service Co.*, 338 U.S. 451. See also *Chicago, Milwaukee & St. Paul Railway Company, et al., v. Minneapolis Civic and Commerce Association*, 247 U.S. 490; *Western Maryland Ry. Co. v. Commissioner*, 33 F. 2d 695.

In view of the foregoing holding, there arises the question of whether petitioner is entitled to report such income on the installment basis as provided in Section 44 (b), Internal Revenue Code.<sup>2</sup>

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<sup>2</sup>Sec. 44. Installment Basis.

\* \* \*

(b) Sales of Realty and Casual Sales of Personality [sic].—In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments

The short answer is that the petitioner and his wife, having exercised in their 1948 income tax return the option granted them by law to report the gain derived from the transaction in controversy upon a basis other than the installment basis, may not now change to the installment basis of reporting such gain. *Pacific National Co. v. Welch*, 304 U.S. 191; *United States v. Kaplan*, 304 U.S. 195. Moreover, the evidence does not show that the method employed by petitioner and his wife does not, if properly applied, clearly reflect income. They received in the transaction Terrace's promissory note in the amount of \$175,000. It has been stipulated that the fair market value of such note at the time it was received was \$125,000. Respondent has made his determination upon the basis of such fair market value.

We answer the question posed in the negative and hold that petitioner is not entitled to report the gain in controversy on the installment basis.

The agreement of the parties with regard to the

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do not exceed 30 per centum of the selling price (or, in case the sale or other disposition was in a taxable year beginning prior to January 1, 1934, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

deduction by petitioner of attorney's fees in the amount of \$1,000 as an ordinary and necessary business expense will be reflected in the Rule 50 recomputation consequent hereon.

Decision will be entered under Rule 50.

Served October 30, 1953.

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[Title of Tax Court and Cause.]

RESPONDENT'S COMPUTATION FOR  
ENTRY OF DECISION

The attached computation reflecting a deficiency in income tax in the amount of \$41,370.43 for the taxable year 1948 is submitted on behalf of the respondent in compliance with the opinion of the Court determining the issues in this proceeding.

The computation is submitted without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court pursuant to the statute in such cases made and provided.

/s/ DANIEL A. TAYLOR,

Chief Counsel, Internal  
Revenue Service.

Without prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled proceeding.

/s/ KENNETH S. CAREY,

Counsel for Petitioners.

ARC-Ap:SF  
SF:CWN:DRU-Recomputation

Audit Statement

In re: S. Nicholas Jacobs and  
Dolores I. Jacobs  
1065 Sutter Street  
San Francisco, California  
Docket No. 40649

| Year                  | Deficiency   |
|-----------------------|--------------|
| 1948 Income Tax ..... | \$ 41,370.43 |

Recomputation of tax liability has been prepared in accordance with the opinion of The Tax Court of the United States promulgated October 30, 1943.

Adjustments to Net Income

|   |              |
|---|--------------|
| Net income as disclosed by statutory notice .....                                       | \$189,680.67 |
| Nontaxable income and additional deductions:  |              |
| (a) Legal fee .....   | 1,000.00     |
| Net income as adjusted based on the opinion of The Tax Court of the United States ..... | \$188,680.67 |

Explanation of Adjustments

(a) Deduction of \$1,000.00 for legal fee in connection with Hollywood Park tract is allowed as an ordinary and necessary business expense in accordance with agreement of the parties.

Computation of Alternative Tax

|   |              |
|---|--------------|
| Net income .....  | \$188,680.67 |
| Less: Excess of net long-term capital gain over net short-term capital loss ..... | 15,789.09    |
| Ordinary net income .....   | \$172,891.58 |
| Less: Three exemptions at \$600.00 each .....                                     | 1,800.00     |
| Normal tax and surtax net income .....  | \$171,091.58 |

## Computation of Alternative Tax—(Continued)

|   |          |              |
|---|----------|--------------|
| One-half of normal tax and surtax net<br>income .....         |          | \$ 85,545.79 |
| Tentative tax .....   |          | \$ 54,878.46 |
| Less: 17% on \$400.00 .....                                   | \$ 68.00 |              |
| 12% on \$54,478.46 .....                                      | 6,537.42 | 6,605.42     |
|   |          | <hr/>        |
| Balance of tentative tax .....                                |          | \$ 48,273.04 |
| Partial tax—twice the above balance of<br>tentative tax ..... |          | \$ 96,546.08 |
| 50% of \$15,789.09 .....                                      |          | 7,894.55     |
|   |          | <hr/>        |
| Alternative tax .....   |          | \$104,440.63 |

## Computation of Income Tax

|  |              |              |
|--|--------------|--------------|
| Net income .....   | \$188,680.67 |              |
| Less 3 exemptions at \$600.00 each .....   | 1,800.00     |              |
|  |              | <hr/>        |
| Normal tax and surtax net income .....   | \$186,880.67 |              |
| One-half of normal tax and surtax net<br>income .....  | \$ 93,440.34 |              |
| Tentative tax .....  |              | \$ 61,613.10 |
| Less: 17% on \$400.00 .....  | \$ 68.00     |              |
| 12% on \$61,213.10 .....   | 7,345.57     | 7,413.57     |
|  |              | <hr/>        |
| Balance .....  |              | \$ 54,199.53 |
| Total income tax—twice the above bal-<br>ance .....  |              | \$108,399.06 |
| Total alternative tax .....  |              | \$104,440.63 |
| Income tax liability .....   |              | \$104,440.63 |
| Income tax liability disclosed by origi-<br>nal return, Account No. 319104, May,<br>1949, List ..... |              | 63,070.20    |
|  |              | <hr/>        |
| Deficiency in income tax .....   |              | \$ 41,370.43 |



The Tax Court of the United States  
Washington

Docket No. 40,649

S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Court's Findings of Fact and Opinion, promulgated October 30, 1953, the parties herein having filed an agreed computation of tax on February 3, 1954, it is

Ordered and Decided: That there is a deficiency in income tax for the taxable year 1948 in the amount of \$41,370.43.

/s/ ERNEST H. VAN FOSSAN,  
Judge.

Entered February 4, 1954.

Served February 4, 1954.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 40,649

S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION FOR REVIEW

Now Come the above-named petitioners by their attorneys, Everett S. Layman and Kenneth S. Carey, and petition the United States Court of Appeals for the Ninth Circuit to review the decision of the Tax Court of the United States rendered and entered on February 4, 1954, ordering and deciding that there is a deficiency in petitioners' federal income taxes for the calendar year 1948 of Forty-one Thousand Three Hundred Seventy and 43/100 Dollars (\$41,370.43). This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

#### I.

The petitioners are S. Nicholas Jacobs and Dolores I. Jacobs, San Francisco, California. Said petitioners filed their federal income tax return for the calendar year 1948 with the Collector of Internal Revenue, First District of California.

## II.

## Nature of the Controversy

The controversy involves the proper determination of petitioners' federal income taxes for the calendar year 1948.

Petitioner S. Nicholas Jacobs (hereinafter for convenience usually called "Dr. Jacobs") had owned land in the County of Sacramento, State of California, for more than six (6) months prior to January 1, 1946. In August, 1946, a corporation (Hollywood Subdivision, Inc.) was organized to subdivide said land and thereby Dr. Jacobs, who was and is a doctor of medicine, would no longer engage in his individual capacity in subdividing and selling real estate and would be relieved of any possibility of personal liability. Plans to this end were abandoned when Dr. Jacobs became ill, was operated on and had to leave the state to recuperate. These plans then lay dormant for more than a year. Early in 1948 an offer was made by Frank MacBride, Jr., to Dr. Jacobs to buy the land from Dr. Jacobs. This offer was rejected by Dr. Jacobs. However, Mr. MacBride, the offeror, was informed that he might gain control of the land by purchasing stock in the corporation if he were still interested after the land was transferred to the corporation in exchange for its stock, but that neither the land nor the stock was for sale at that time. No commitment to sell or buy the said stock was entered into at any time. The parties were

specifically left free to withdraw from the transaction at their pleasure. Hollywood Subdivision, Inc., thereafter and on or about March 29, 1948, secured a permit from the Commissioner of Corporations of the State of California to issue the stock in exchange for the land. After the stock was issued in exchange for the land, petitioner sold the stock to a corporation (Hollywood Terrace, Inc.) controlled by MacBride, on or about April 5, 1948. Said latter corporation thereafter dissolved Hollywood Subdivision, Inc., on or about April 8, 1948.

The petitioners contend the transaction was the sale of stock and therefore there was a capital gain on an asset held for more than six months, and so reported in the return. The Commissioner in the deficiency letter asserted that it was a sale of real estate in the ordinary course of business and that all of the gain was and is ordinary income. The Tax Court agreed with the Commissioner. The controversy is whether there was a sale of the capital stock of Hollywood Subdivision, Inc., and thereby a capital gain, or whether there was a sale of real estate in the ordinary course of business with resultant ordinary income taxed at ordinary rates.

### III.

Taxpayers being aggrieved by the findings of fact and conclusions of law contained in the findings and opinion of the Tax Court, and by its decision entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

IV.

Petitioners assign as error the following findings and conclusions of the Tax Court of the United States:

A. The failure to recognize that the transaction was in substance and fact as well as form a sale of a capital asset held for more than six (6) months, to wit, corporate stock.

B. The failure to recognize the business purpose of said corporation.

C. The finding that the conveyance of Subdivision No. 3 to Hollywood Subdivision, Inc.; the issuance of the stock of Hollywood Subdivision, Inc., to petitioner S. Nicholas Jacobs; the transfer of such stock by said petitioner to Hollywood Terrace, Inc., and the receipt by said petitioner of a note in the sum of One Hundred Seventy-five Thousand and no/100 Dollars (\$175,000.00) were component parts of a single transaction, by which petitioner effected a sale of land in the ordinary course of business.

D. The finding that the corporation known as Hollywood Subdivision, Inc., served no business purpose and performed no business function other than to act as a conduit to transfer the title to Subdivision No. 3 from petitioner to a purchaser of such real estate.

E. The finding of a deficiency in excess of that conceded by petitioners for the calendar year 1948, in lieu of a determination that there was due and

owing from petitioners the sum of Two Thousand Twenty-five and 73/100 Dollars (\$2,025.73) and no more as and for a deficiency in income taxes for the calendar year 1948.

F. The finding and/or conclusion that petitioners, not having reported the transaction on the installment basis in their return, are precluded from later adopting such method of reporting such gain.

Dated: April 28, 1954.

/s/ EVERETT S. LAYMAN,

/s/ KENNETH S. CAREY,

Attorneys for Petitioners.

Received and filed April 30, 1954, T.C.U.S.

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[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, and to B. H. Neblett, Regional Counsel; E. C. Crouter, Acting Appellate Counsel, and Charles W. Nyquist and John P. Downes, Special Attorneys, Internal Revenue Service:

You and each of you are hereby notified that the petitioners on or about the 30th day of April, 1954, filed with the Clerk of the Tax Court of the United

States at Washington, D. C., a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the Decision of the Tax Court heretofore rendered in the above-entitled cause.

A copy of the petition for review and the grounds upon which the same was taken as filed is attached hereto and by this notice served upon you.

Dated at San Francisco, California, this 30th day of April, 1954.

/s/ EVERETT S. LAYMAN,

/s/ KENNETH S. CAREY,  
Counsel for Petitioners.

Affidavit of Service by Mail attached.

Received and filed May 6, 1954, T.C.U.S.

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[Title of Tax Court and Cause.]

### CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 21, inclusive, constitute and are all of the original papers and proceedings, including all original exhibits, (A-1), attached to the stipulation of facts, and (B and C), admitted in evidence, on file in my office as the original and complete record in the proceedings before the Tax Court of the United States entitled: "S. Nicholas Jacobs and Dolores I. Jacobs, Petitioners, v. Com-

missioner of Internal Revenue, Respondent, Docket No. 40649," and in which the petitioners in the Tax Court have initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of May, 1954.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk, the Tax Court of the  
United States.

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[Endorsed]: No. 14374. United States Court of Appeals for the Ninth Circuit. S. Nicholas Jacobs and Dolores I. Jacobs, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed June 1, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 14374

S. NICHOLAS JACOBS and DOLORES I.  
JACOBS,

Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON BY APPELLANTS

To the Chief Judge and the Honorable Circuit  
Judges of the United States Court of Appeals  
for the Ninth Circuit:

A. Statement of Points to Be Relied Upon

Come Now Appellants and state the points upon  
which they intend to rely in the appeal filed herein  
as follows:

I.

The transaction by which Dr. Jacobs sold stock to  
Hollywood Terrace, Inc., was in substance and in  
fact a sale of a capital asset held for more than six  
(6) months. The Tax Court's conclusion to the con-  
trary is inconsistent with the facts found by the  
Tax Court and is error.

II.

The Tax Court erred in failing to find that the

sale, in substance, fact and form, was a sale of stock and not a sale of land.

### III.

The Tax Court erred in failing to find that there was no agreement for an entire transaction but that there were three separate steps:

- (1) An exchange of land for stock;
- (2) A sale of stock; and
- (3) The dissolution of a corporation by the buyer of the stock.

### IV.

The Tax Court erred in finding that Hollywood Subdivision, Inc., had no business purpose.

### V.

The Tax Court erred in ignoring its corporate entity.

### VI.

The Tax Court erred in finding that the transaction was in substance a sale of land.

### VII.

The Tax Court erred in failing to find that the event relied upon by the Appellee and the Tax Court was one out of Appellants' control and was done by persons separate and distinct from Appellants.

### VIII.

The Tax Court erred in failing to find that Appellants are entitled to utilize the so-called installment basis of reporting the gain on this transaction.

IX.

The Tax Court erred in failing to find that the various steps were not part of a single transaction.

X.

The Tax Court erred in failing to find that the existence of Hollywood Terrace, Inc., demonstrates that the MacBride interests considered that in substance there was a sale of stock and not a sale of land.

/s/ EVERETT S. LAYMAN,

/s/ KENNETH S. CAREY,

Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 9, 1954.

1800

The year 1800 was a significant one in the history of the United States. It marked the beginning of the new century and the start of the new millennium.

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